United States Environmental Protection Agency

Office of Pollution Prevention and Toxics – National Program Chemicals Division

Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations for PCBs in Small Capacitors in Fluorescent Light Ballasts in Schools and Daycares

RIN 2070-AK12

EPA-HQ-OPPT-2016-0635

Meeting Materials and Summary of Written Comments by Tribes in Response to Tribal Consultation and Targeted Outreach for PCB Use Authorizations Update Proposed Rule.

Multiple Dates.

TABLE OF CONTENTS

I. August 20, 2010 Confederated Tribes of the Umatilla Indian Reservation Letter

Confederated Tribes *of the*
Umatilla Indian Reservation
Department of Natural Resources
Administration

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Phone 541-276-3165 Fax: 541-276-3095

August 20, 2010

Via E-mail to: Federal eRulemaking Portal, http://www.regulations.gov

Document Control Office (7407M)
Office of Pollution Prevention and Toxics (OPPT)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington D.C. 20460-0001

Re: CTUIR DNR Comments on Docket ID No. EPA-HQ-OPPT-2009-0757, Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations (Federal Register/Vol. 75, No. 66/Wednesday, April 7, 2010/Proposed Rules)

Dear Sir or Madam:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Department of Natural Resources (DNR) offers the following comments on the U.S. Environmental Protection Agency's (EPA's) proposed rules referenced above regarding Reassessment of Use Authorizations for Polychlorinated Biphenyls (PCBs). As to "Reconsideration of the Use of the 50 ppm Level for Excluded PCB Products[,]" we ask that you reduce the level to zero. There is no adequate justification for maintaining the 50 ppm level for these products. Specifically, the CTUIR DNR supports the elimination of PCBs from all dyes, pigments and inks, and encourages EPA to adopt rules mandating such a requirement.

As the proposed rules state:

> "The level of 50 ppm has been used in PCB use regulations since 1979. Based on regulatory history, this number is based almost entirely on economic considerations. There are no traditional exposure and risk assessment calculations . . .."

The current federal regulations allowing PCB levels of up to 50 ppm in dyes, pigments and inks are particularly problematic. Such PCB-tainted components, used in newspapers, magazines and other printed materials, eventually add to the toxic contaminant burden in wastewater discharges when those products are recycled. As persistent bioaccumulative compounds, even miniscule amounts can add up over time and ultimately pose "an unreasonable risk to human health and the environment." Paper recycling should be encouraged; allowing trace PCBs in dyes, pigments and inks could threaten the practice if it becomes impossible or cost-prohibitive to de-contaminate wastewater streams sufficiently to meet applicable water quality standards.

Clean water and healthy fish are among the CTUIR's First Foods. Our ancestors, and those of three other tribes (the Nez Perce Tribe, the Warm Springs Tribe and the Yakama Nation), signed virtually identical treaties with the United States over 150 years ago. In those treaties we secured our pre-existing right "of taking fish," a right which by necessity encompasses a right to have fish to take *and to take fish that are safe to consume*. The federal government and its various agencies, including the EPA, are obligated to uphold and respect those rights, and have a separate but related Trust Responsibility to safeguard the resources on which those rights depend.

Since those treaties were signed, the Columbia River Basin and its resources have suffered from major environmental loss and damage. One of the most obvious indicators has been Pacific salmon, one of our most significant First Foods. In the early 1990s, the first of over a dozen salmon species was listed under the Endangered Species Act (ESA). Much turmoil and many struggles have ensued, often revolving around the "Four Hs" of salmon mortality: the hydrosystem, degraded tributary habitats, poor hatchery practices, and harvest.

Many improvements have been made in addressing these factors, and recent years have seen some salmon populations begin to rebound, at least temporarily. Nevertheless, no salmon species has been de-listed under the ESA. Other important fish resources, such as Pacific lamprey, are disappearing precipitously. Most importantly, while all these more visible salmon recovery issues have been the focus of attention, there has been a growing awareness, supported by mounting empirical evidence, of the alarming fact that fish in the Columbia River and its tributaries are exposed to a wide range of dangerous toxins in addition to all the other threats to their existence and survival.

PCBs are among those contaminants. EPA and the Columbia River Inter-Tribal Fish Commission (CRITFC), in their *Columbia River Basin Fish Contaminant Survey*, found toxic chemicals (including PCBs) present in varying amounts in multiple fish species throughout the Columbia River Basin.[1] Furthermore, tribal members (including those of the CTUIR) eat substantially more of these fish than the general non-Indian population,[2] which so far has been the reference point for determining water quality standards. Thus, we are at greater risk from increased exposure to these toxins. As the proposed rules state:

> "ATSDR has concluded that there may be an adverse impact on the health of persons who eat fish contaminated with PCBs. Disadvantaged populations may be more exposed to PCBs in contaminated fish than members of the general population. Some disadvantaged communities, such as Indian tribes, have subsistence lifestyles and rely on fish and mammals that may be caught in PCB contaminated waters and environs, as a primary source of nutrition. Fish in these waters may have been contaminated by both PCB wastes disposed of prior to the use authorizations, as well as releases that have

[1] *See* http://yosemite.epa.gov/R10/OEA.NSF/webpage/Columbia+River+Basin+Fish+Contaminant+Survey.
[2] *See* http://www.critfc.org/tech/94-3report.html.

> occurred from the currently authorized use, distribution in commerce and disposal of PCBs."

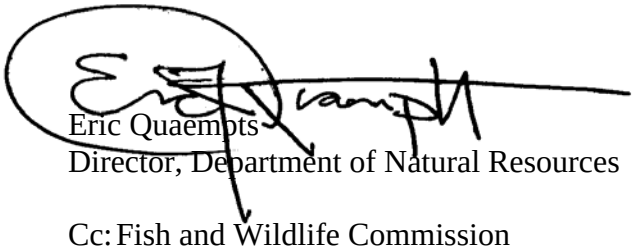
Pursuant to Section J, Environmental Justice Considerations, in the proposed rules, "PCB use and distribution in commerce for use" *do* have "disproportionate environmental and public health impacts" on tribal populations such as the CTUIR. Allowing continued use of PCBs in dyes, pigments, inks and other products results in significant risks to tribal members and thus raises serious Environmental Justice concerns. As noted above, PCBs bioaccumulate in fish, fish which our tribal members eat at a substantially higher rate than most members of the general public. Because the primary threat from PCBs occurs when they enter our rivers and streams and the food chain, tribal members are disproportionately impacted by allowing any PCBs into the environment. Even though PCB manufacturing and use has been curtailed to a degree, legacy contributions continue and so it is unacceptable to allow additional inputs and discharges that only add to the burden.

For more than six years the CTUIR has been working closely with EPA Region 10 and with Oregon to revise the state's water quality standards for toxics to account for the disproportionately higher tribal fish consumption rate. We are now working with Washington to do the same thing. In addition, EPA Region 10, in conjunction with multiple stakeholders including the tribes, has developed a *Columbia River Toxics Reduction Action Plan* that will more directly confront the problem by exploring source reduction and cleanup. Finally, the "Columbia River Restoration Act of 2010" has been introduced in the current Congress. It would bring heightened attention and increased resources to our efforts to reduce and eliminate toxic pollutants in the region. Perpetuating the discharge of PCBs by maintaining the 50 ppm level for dyes, pigments and inks would be contrary to, and would undermine, all these positive steps that are now being taken.

The CTUIR and other tribes, in our historic and judicially-recognized role as resource co-managers, have been at the forefront of actions to preserve and enhance salmon, water quality and other tribal First Foods. We have emphasized scientifically sound and rigorous strategies, cooperative working relationships, and cost-effective management. Beyond these immediate approaches, we have always been guided by the wisdom of our ancestors, and concern for the next Seven Generations, as we have sought to maintain and practice our way of life. All this is threatened by the ubiquitous toxins now so widespread in our environment. Every opportunity to diminish the amount of toxins released should be embraced. Failure to do so would be a denial of Environmental Justice, for us and for those who will come after us.

Therefore, the CTUIR DNR asks that you stop using the 50 ppm level for excluded PCB products, including dyes, pigments and inks, and that you establish the level at zero. Thank you for your consideration of our comments.

Sincerely,



Eric Quaempts
Director, Department of Natural Resources

Cc: Fish and Wildlife Commission
Tribal Water Commission
Dennis McLerran, Administrator, EPA Region 10
Dick Pedersen, Director, Oregon DEQ
Ted Sturdevant, Director, Washington Department of Ecology
Rick George, Manager, Environmental Planning/Rights Protection Program, DNR

EQ: cfm

II. 2011 OPPT Wide Tribal Leader Proposed Rulemaking Invitation Letter

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 15 2011

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

Re: Notification of Consultation and Coordination on the Office of Pollution Prevention and Toxic's (OPPT) Proposed Rulemakings under the Toxic Substances Control Act (TSCA) for Cadmium, Formaldehyde, and Reassessment of PCB Use

Dear Honorable Leader:

The U.S. Environmental Protection Agency (EPA) Office of Pollution Prevention and Toxics (OPPT) is initiating consultation and coordination with federally-recognized Indian Tribes regarding the following actions: Cadmium Health and Safety Data Reporting under the Toxic Substances Control Act (TSCA) Section 8 (d), Formaldehyde Standards for Composite Wood Products Rule, and the Reassessment of PCB Use Authorization. Background on each of these actions is enclosed to familiarize you with the measures that are under consideration.

This consultation and coordination process will be conducted in accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes* (www.epa.gov/tribal/consultation/consult-policy.htm). OPPT invites you and your designated consultation representative(s) to participate in this process. OPPT's anticipated timeline for the consultation and coordination period is expected to extend from December 14, 2011- January 30, 2012. During this period, we will be conducting two National Consultation calls. To participate, we invite you or your designee to join us during one or both of the following calls:

Tuesday, January 17, 2012 from 1:00-3:00 pm Eastern Standard Time

Call in number: 1-866-900-8984
Please dial Conference ID number: 35296623

Wednesday, January 18th, 2012 from 12:00-2:00 pm Eastern Standard Time

Call in number: 1-866-900-8984
Please dial Conference ID number: 35301254

You will hear music after dialing-in, and then the operator will place you into conference. If you are unavailable for these calls and have comments including written comments on any of these actions, please send them to: Mary Lauterbach at lauterbach.mary@epa.gov

Should you wish to send comments through the mail, please send them to the following address:

Mary Lauterbach
U.S. Environmental Protection Agency
Office of Pollution Prevention and Toxics – MC 7408M
1200 Pennsylvania Ave, NW
Washington, DC 20460

Enclosed are background materials for these actions for your review. This information will also be made available on *EPA's Tribal Portal: http://www.epa.gov/tribal/consultation.* We look forward to hearing from you on these important matters and hope you can join us on one of these calls. If you have any other questions or we may be of additional assistance in the interim, please contact Mary Lauterbach, on my staff, at lauterbach.mary@epa.gov or 202-564-8821. Thank you.

Sincerely,

Wendy C. Hamnett

Wendy Cleland-Hamnett, Director
Office of Pollution Prevention & Toxics

cc: National Tribal Toxics Council
National Tribal Operations Committee
JoAnn Chase, Director, American Indian Environmental Office
Maryann Petrole, Director, Environmental Assistance Division
Maria Doa, Director, Chemical Control Division
Tala Henry, Director, National Program Chemicals Division
Cindy Wire, OCSPP Lead Region Coordinator
Teri Bahrich, Tribal Lead Region Coordinator, Region 8
Caren Robinson, OCSPP Tribal Consultation Advisor

Enclosures

Cadmium Background for Tribal Consultation and Coordination
December 6, 2011

Cadmium Petition under Toxic Substances Control Act (TSCA) §21

In May 2010, four non-governmental organizations (NGOs) the Sierra Club, Rochesterians against the Misuse of Pesticides, the Center for Environmental Health, and the Empire State Consumer Project petitioned the Consumer Product Safety Commission (CPSC) pursuant to 5 U.S.C. §553(e) and the EPA pursuant to 15 U.S.C. 2620 TSCA §21 to "require producers, importers, and processors of cadmium and cadmium compounds that are reasonably likely to be incorporated into consumer products to provide EPA with lists and/or copies of ongoing and completed unpublished health and safety studies related to cadmium in consumer products, especially for consumer products intended for use by children. The NGOs also petitioned EPA "to work with CPSC to identify manufacturers and/or processors; and, if necessary, adopt a §6 rulemaking under TSCA limiting cadmium and cadmium compounds in metal toy jewelry."

EPA Response

EPA agreed to use its authority under TSCA §8(d) to require reporting by producers, importers, and processors of cadmium and cadmium compounds that are reasonably likely to be incorporated into consumer products. EPA will propose a rule requiring the submission of lists and/or copies of ongoing or completed unpublished health and safety studies, that may be relevant to determining if a potential hazard exists and if a product may be a banned hazardous substance under CPSC guidelines.

EPA Statutory Authority

TSCA §21 allows any person to petition the EPA to initiate a proceeding for the issuance of a rule under TSCA §6 and §8. The Administrator may either grant or deny the petition. Upon granting such petition, EPA must promptly commence an appropriate proceeding in accordance with the appropriate section under TSCA.

TSCA Section 8(d) authorizes EPA to promulgate rules requiring manufacturers, importers, and processors to submit lists and/or copies of ongoing and completed unpublished health and safety studies. The term "health and safety study" is intended to be interpreted broadly and means "any study of any effect of a chemical substance or mixture on health or the environment or on both," including but not limited to, epidemiological or clinical studies; studies of occupational exposure; in vivo and in vitro toxicological studies; and eco-toxicological studies.

Section 6(a) of TSCA provides that, if EPA "finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents or will

present an unreasonable risk of injury to health or the environment, the Administrator shall by rule apply one or more of the following requirements to such substance or mixture to the extent necessary to protect adequately against such risk using the least burdensome requirements."

Potential adverse Health Effects from Cadmium Exposure

Due to the potential health effects of exposure to cadmium or cadmium compounds, EPA is concerned about the possible presence and bioavailability of cadmium or cadmium compounds in consumer products generally and especially those consumer products used by or around children. EPA has classified cadmium as a Group B1, probable human carcinogen. Further, EPA has determined acute (short-term) effects of cadmium in humans through inhalation exposure consist mainly of effects on the lung, such as pulmonary irritation. Chronic (long-term) inhalation or oral exposure to cadmium leads to a build-up of cadmium in the kidneys that can cause kidney disease. Cadmium has been shown to be a developmental toxicant in animals, resulting in fetal malformations and other effects, but no conclusive evidence exists in humans. Animal studies have demonstrated an increase in lung cancer from long-term inhalation exposure to cadmium.

Current Status:

EPA committed to "work closely with CPSC to determine the most effective means for addressing cadmium in toy metal jewelry and other consumer products and to determine whether action by CPSC should have precedence and to initiate a §6 rulemaking only if this effort does not result in action by CPSC or if EPA concludes that some form of joint action is appropriate."

Cadmium has been recommended to the Interagency Testing Committee (ITC) and will be added to the TSCA Priority Testing List. The recommendation will appear in the ITC's 69th report scheduled for publication in December 2011.

Following the ITC recommendation, EPA will publish a TSCA §8(d) final rule requiring manufacturers and importers to submit health and safety studies on cadmium and cadmium compounds that are reasonably likely to be incorporated into consumer products. This will be followed by a proposed rule requiring processors and distributors to submit health and safety studies on cadmium and cadmium compounds that are reasonably likely to be incorporated into consumer products.

The final §8(d) action is currently in draft form for final Agency review. It is expected to publish in the spring of 2012.

The proposed rule will be similar to the final rule and is also in draft form for final agency review. The proposed rule is expected to publish in the late spring of 2012.

For additional information on this subject refer to the following URLs:
http://www.epa.gov/lead/pubs/toyjewelry.htm
http://www.epa.gov/oppt/chemtest/pubs/petitions.html#petition7
http://www.epa.gov/oppt/chemtest/index.html

Consultation Plan: Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations

Background Information on this Initiative

The Toxic Substances Control Act (the Act), enacted in 1976, provides EPA with authority to place restrictions on the production and use of chemical substances and/or mixtures. Section 6(e) of the Act (Attachment A) banned the manufacture, processing, distribution in commerce, and use of polychlorinated biphenyls (PCBs), except when such uses were "totally enclosed" or would otherwise pose no unreasonable risk of injury to health or the environment.

Congress's ban on PCBs and the implementing rules promulgated by EPA have done much to decrease the amount of PCBs in commerce; however, current allowable PCBs uses, along with the potential for their release into the environment, will continue so long as EPA's regulations allow it. The most effective method of reducing PCB use, distribution, and any consequential releases in the United States is to consider modifications to the regulations that allow their continued use by reassessing these authorizations to account for present-day economic conditions, technological advances, and the passage of years since the Agency originally promulgated them.

EPA has initiated this rulemaking to reassess the ongoing authorized uses of PCBs to determine whether certain use authorizations should be ended or phased out because EPA can no longer support the conclusion that they do not present unreasonable risk of injury to health and the environment. This rulemaking may address the following areas: (1) the use, distribution in commerce, marking and storage for reuse of liquid PCBs in electric and non-electric equipment (including use of PCB contaminated porous surfaces); (2) improvements to the existing use authorization for natural gas pipelines to provide more transparency for the Agency and the public when PCB releases occur; and (3) definitional and other regulatory clarifications and adjustments. EPA anticipates publishing a Notice of Proposed Rulemaking (NPRM) in the autumn of 2013.

1. Background of PCBs

PCBs belong to a broad family of man-made organic chemicals known as chlorinated hydrocarbons. PCBs vary in consistency from thin, light-colored liquids to yellow or black waxy solids. PCBs were widely used in industrial and commercial applications including electrical, heat transfer, and hydraulic equipment; as plasticizers in paints, plastics, and rubber products; in pigments, dyes, and carbonless copy paper; and many other industrial applications. PCBs were first domestically manufactured in 1929 and use continued with few restraints until the 1970s.

The toxicity associated with PCBs was recognized almost immediately due to a variety of industrial incidents. Harvard School of Public Health organized a conference about the hazards of PCBs in 1937, and a number of publications referring to the toxicity of various chlorinated hydrocarbons were published before 1940. PCBs are a persistent in the environment, bioaccumulate and biomagnify in food chains and are toxic to humans as well as wildlife.[1]

[1] *See, e.g.* Agency for Toxic Substances and Disease Registry (ATSDR). Toxicological Profile for Polychlorinated Biphenyls (PCBs) (November 2000). http://www.atsdr.cdc.gov/toxprofiles/tp17.html.

Concern over the persistence, bioaccumulation, and toxicity of PCBs in the environment led the United States Congress to ban their domestic production in the Toxic Substances Control Act (TSCA) (Attachment A), with certain exceptions and use authorizations.

2. The Regulations at 40 CFR 761 (Attachment B)

The authority for this action comes from sections 6(e)(2)(B) and (C) of TSCA (15 U.S.C. 2605(e)(2)(B) and (C)) as well as section 6(e)(1)(B) (15 U.S.C. 2605(e)(1)(B)). TSCA section 6(e)(2)(A) provides that "no person may manufacture, process, or distribute in commerce or use any polychlorinated biphenyl in a manner other than in a totally enclosed manner" after January 1, 1978. However, paragraph 6(e)(2)(B) provides EPA with the authority to issue regulations allowing the use and distribution in commerce of PCBs in a manner other than in a totally enclosed manner if the EPA Administrator finds that the use and distribution in commerce "will not present an unreasonable risk of injury to health or the environment." EPA's authority to allow distribution of PCBs in commerce under this provision is limited to those PCB items that were "sold for purposes other than resale" before April 1978 (TSCA section 6(e)(3)(C)) (15 U.S.C. 2605(e)(3)(C)).

On May 31, 1979, EPA promulgated regulations that implemented the 1978 PCB ban imposed by TSCA.[2] After the May 31, 1979, rule was published, the Environmental Defense Fund, Inc. (EDF) petitioned the U.S. Court of Appeals for the District of Columbia Circuit to review the portion of the 1979 regulation that designated the use of "intact and non-leaking" PCB liquid filled capacitors, electromagnets, and transformers (other than railroad transformers) as "totally enclosed." On October 30, 1980, the Court decided that there was insufficient evidence in the record to support the Agency's classification of the equipment as "totally enclosed."[3] The court vacated this portion of the rule and remanded it to EPA for further action. On August 25, 1982, EPA issued a new final rule (47 FR 37342) authorizing the use of PCBs in capacitors, electromagnets, and transformers (other than railroad transformers), in accordance with TSCA paragraph 6(e)(2)(B).[4] Time limits were imposed on the use of certain types of PCB equipment in locations where they would pose an exposure risk to food and feed. Since then, there have been additional rulemakings revising the use authorizations; however, with certain exceptions, the rules have continued to allow the use of PCB containing equipment to the end of the equipment's useful life, to allow the passive removal of PCB containing equipment from use through attrition, and to require the disposal of PCBs and PCB containing equipment in an environmentally-sound manner.

3. The Advance Notice of Proposed Rulemaking

On April 7, 2010 EPA published an Advanced Notice of Proposed Rulemaking (ANPRM) entitled "Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations" (75 FR 17645) (Attachment C). The ANPRM explains that EPA believes that the balance of risks and benefits resulting from the continued use of remaining PCB containing equipment may have

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[2] U.S. EPA. Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Final Rule. **Federal Register** (44 FR 31514, May 31, 1979).

[3] *Environmental Defense Fund v. Environmental Protection Agency*, No.79-1580 (D.C. Cir. October 30, 1980).

[4] U.S. EPA. PCB Use in Electrical Equipment Final Rule. **Federal Register** (47 FR 37342, August 25, 1982).

changed enough to consider amending the regulations. As authorized PCB containing equipment ages, it becomes more prone to malfunctions, failure, and leaks. Technological advances in the industries that previously relied on PCBs have made replacement of PCBs with various alternatives economically feasible. Thus, continued use of PCBs in transformers and other electrical equipment no longer has the considerable level of economic benefits, which was assumed for the findings EPA made in the earlier rulemakings.

Potential Impact to Tribes

The EPA recognizes that decisions concerning the reassessment of the PCB use authorizations and other adjustments to the PCB regulations at 40 CFR 761 have consequences for tribal, state, and local governments, and for private parties. In particular tribes may be directly affected to the extent that they own, use, or dispose of PCB containing equipment including electrical equipment and florescent light ballasts. This equipment would be pre-1979.

In addition to general comments, EPA requests input on the following areas:

1. Do tribes have unique PCB-exposure concerns that EPA should be aware of in developing this action? EPA seeks input on any disproportionate environmental and public health impacts that PCB use and distribution in commerce for use may have on tribal populations. Examples may include increased exposure to contaminated fish than members of the general population, or increased exposure to PCB spills from abandoned or vandalized PCB containing electrical equipment than members of the general population.

2. To what extent are tribes direct owners or users of PCBs and PCB equipment? Do they own PCB transformers? If so, how old are they? Have there been instances of leaks or spills? If so, how much is spent cleaning of PCB accidents or spills?

3. Do the tribes have any information about the use of privately-owned PCB contaminated equipment on tribal lands? Have there been instances of leaks or spills?

5. EPA is concerned about the release of high concentrations of PCBs from fluorescent light ballasts, particularly in public buildings, such as schools. Do the tribes own or use buildings with PCB containing florescent light ballasts? Have they leaked? If so, how much has been spent remediating these spills?

6. Have the tribes experienced instances where PCBs have leaked from natural gas pipelines into gas meters, homes, or elsewhere?

Opportunity for Tribes to Participate

The tribal consultation process establishes a timeline for government-to-government consultation and coordination. Following the conclusion of the tribal consultation process, tribes may also participate in any public review and comment process.

Tribes may access related consultation information on the EPA Tribal Portal under Tribal Consultation Opportunities, located at: http://yosemite.epa.gov/oita/TConsultation.nsf/TC?OpenView.

More information on PCBs and EPA's regulations affecting their use is available at: http://www.epa.gov/epawaste/hazard/tsd/pcbs/index.htm.

Also, you may track the progress of this rulemaking on EPA's Rulemaking Gateway: http://yosemite.epa.gov/opei/RuleGate.nsf/byRIN/2070-AJ38.

The combined goal of all these efforts is to ensure there is sufficient information for tribal officials to make an informed decision about the desire to continue with consultation and to understand how to provide informed input.

Additional Information

Toxic Substances Control Act (TSCA) § 6(e); 15 USC § 2605(e), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+15USC2605.

40 CFR Part 761, Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions, *available at* http://www.access.gpo.gov/nara/cfr/waisidx_07/40cfr761_07.html.

US EPA, Advanced Notice of Proposed Rulemaking, Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations, (75 FR 17645, April 7, 2010), *available at* http://www.gpo.gov/fdsys/pkg/FR-2010-04-07/pdf/2010-7751.pdf.

Consultation Plan: Formaldehyde Standards for Composite Wood Products, Implementing Regulations

Background Information on this Initiative

EPA is promulgating regulations to implement the requirements of the Formaldehyde Standards for Composite Wood Products Act, or Title VI of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2697 (hereinafter TSCA Title VI) (Attachment A). TSCA Title VI establishes statutory formaldehyde emission standards for hardwood plywood, medium-density fiberboard, and particleboard sold, supplied, offered for sale, or manufactured (including imported) in the United States. TSCA Title VI requires the Department of Housing and Urban Development, in a separate action, to update its regulations on formaldehyde emissions in manufactured homes (24 CFR 3280.308) so that they are in accordance with the TSCA Title VI emissions standards.

1. Background on Formaldehyde

Formaldehyde is a colorless, flammable gas at room temperature and has a strong odor. It is found in some resins used in the manufacture of composite wood products (*i.e.*, hardwood plywood, particleboard and medium-density fiberboard) and in other household products. It is a by-product of combustion and certain other natural processes.[1]

Formaldehyde is an irritant and the National Toxicology Program recently classified it as a known human carcinogen.[2] Depending on concentration, formaldehyde can cause eye, nose, and throat irritation, even when exposure is of relatively short duration. There is also evidence that formaldehyde may be associated with changes in pulmonary function and increased risk of asthma in children.[3] In addition, formaldehyde is a by-product of human metabolism, and thus endogenous levels are present in the body.

2. Events Leading Up to this Action

In 2008 the California Office of Administrative Law approved the California Air Resources Board's (CARB) Airborne Toxic Control Measure (ATCM) to reduce formaldehyde emissions from hardwood plywood, medium-density fiberboard, and particleboard, products referred to collectively as composite wood products. On March 24, 2008, 25 organizations and approximately 5,000 individuals petitioned EPA under section 21 of TSCA to use its authority under section 6 of TSCA to adopt the CARB ATCM nationally. In addition, petitioners requested EPA to extend this regulation to include composite wood products used in manufactured homes.

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[1] Agency for Toxic Substances and Disease Registry (ATSDR). 1999. Toxicological Profile for Formaldehyde and 2010 Addendum to the Profile. Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service.

[2] National Toxicology Program, U.S. Department of Health and Human Services (HHS), 12th Report on Carcinogens, June 10, 2011.

[3] Agency for Toxic Substances and Disease Registry (ATSDR). 1999. Toxicological Profile for Formaldehyde and 2010 Addendum to the Profile. Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service.

On June 27, 2008, EPA issued a Federal Register notice explaining the Agency's decision to grant in part and deny in part the petitioners' request.[4] On December 3, 2008, EPA issued an Advance Notice of Proposed Rulemaking (ANPRM) that announced EPA's intention to investigate whether and what regulatory or other action might be appropriate to protect against risks posed by formaldehyde emitted from the products covered by the CARB ATCM as well as other pressed wood products. To help inform EPA's decision on the best ways to address risks posed by formaldehyde emissions from pressed wood products, the Agency requested public comments and held six half-day public meetings in Research Triangle Park, NC; Portland, OR; Chicago, IL; Dallas, TX; Washington, DC; and New Orleans, LA. EPA received and reviewed comments submitted during the ANPRM comment period which can be found at regulations.gov under docket number EPA-HQ-OPPT-2008-0627.

3. The Formaldehyde Standard for Composite Wood Products Act

On July 7, 2010, President Obama signed into law TSCA Title VI. The statute establishes formaldehyde emission standards that are identical to the CARB ATCM standards for hardwood plywood, medium-density fiberboard, and particleboard sold, supplied, offered for sale, or manufactured in the United States and directs EPA to issue final implementing regulations by January 1, 2013. EPA has been in the process of developing these regulations, including holding a Small Business Advocacy Review Panel. EPA anticipates publishing a Notice of Proposed Rulemaking in the spring of 2012.

4. The Proposed Regulations

The statute instructs EPA to include in the TSCA Title VI implementing provisions relating to, among other things, laminated products, third-party testing and certification, the auditing and reporting of third-party certifiers, products made with no-added formaldehyde resins, product labeling, chain of custody documentation and other recordkeeping requirements, enforcement, and product inventory sell-through provisions. The formaldehyde emission standards themselves are established by statute and cannot be raised or lowered in the TSCA Title VI implementing regulations.

Potential Impact to Tribes

The EPA recognizes that decisions concerning TSCA Title VI implementing regulations have consequences for tribal, state, and local governments, and for private parties. Tribes may be affected to the extent that tribal populations are exposed to formaldehyde emissions from composite wood products, for example composite wood products in manufactured homes.

In addition to general comments, EPA requests input on any disproportionate environmental and public health impacts that formaldehyde emissions from composite wood products may have on tribal populations.

Opportunity for Tribes to Participate

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[4] US EPA, Formaldehyde Emissions from Composite Wood Products; Disposition of TSCA Section 21 Petition; Notice. Federal Register (73 FR 36504, June 27, 2008).

The tribal consultation process establishes a timeline for government-to-government consultation and coordination. After the conclusion of the tribal consultation process, tribes may also participate in any public review and comment process.

Tribes may access related consultation information on the EPA Tribal Portal under Tribal Consultation Opportunities, located at: http://yosemite.epa.gov/oita/TConsultation.nsf/TC?OpenView.

More information on formaldehyde is located at: http://www.epa.gov/iaq/formalde.html.

The combined goal of all these efforts is to ensure there is sufficient information for tribal officials to make an informed decision about the desire to continue with consultation and to understand how to provide informed input.

Additional Information

The Formaldehyde Standards for Composite Wood Products Act, or Title VI of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2697, *available at* http://www.gpo.gov/fdsys/pkg/BILLS-111s1660enr/pdf/BILLS-111s1660enr.pdf

California Environmental Protection Agency Air Resources Board. Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products. Final Regulation Order. April 2008, *available at* http://www.arb.ca.gov/regact/2007/compwood07/fro-final.pdf.

III. June 18, 2013 – National Tribal Toxics Council Meeting Presentation

United States Environmental Protection Agency

Revisiting PCB Use Authorizations

National Tribal Toxics Council Meeting

June 18, 2013

National Program Chemicals Division

Background – Polychlorinated Biphenyls (PCBs)

- Man-made organic chemicals that were domestically manufactured from 1929 until their manufacture was banned by Congress in 1979.
- Due to their non-flammability, chemical stability, and electrical insulating properties, PCBs were used in hundreds of industrial and commercial applications including :
  - Electrical equipment
  - Heat transfer equipment
  - Hydraulic equipment
  - Paints, plastics and rubber products
  - Pigments and dyes
  - Carbonless copy paper
- PCBs are a persistent in the environment, bioaccumulate and biomagnify in food chains and are toxic to humans as well as wildlife.
- In 1979 Congress banned the domestic production of PCBs in the Toxic Substances Control Act (TSCA), but allowed EPA to promulgate certain exceptions and use authorizations.

Current PCB Regulations (40 CFR 761)

- TSCA § 6(e)(2)(B):
  - Provides EPA with the authority to issue regulations allowing use/distribution of PCBs in a manner other than in a totally enclosed manner if the EPA Administrator finds that the use and distribution in commerce "will not present an unreasonable risk of injury to health or the environment."
  - In 1982 EPA issued a final rule (47 FR 37342) authorizing the use of PCBs in capacitors, electromagnets, and transformers, in accordance with TSCA paragraph 6(e)(2)(B).
- Additional restrictions were imposed on the use of certain types of PCB equipment in locations where they would pose an exposure risk to food and feed.
- Subsequent rulemakings have revised the use authorizations; generally, the rules have continued to allow the use of PCB containing equipment to the end of the equipment's useful life.

EPA Reassessment of the Current Regulations

- EPA believes that the balance of risks and benefits resulting from the continued use of remaining PCB-containing equipment may have changed enough to consider amending the current regulations. For example,
  - As equipment ages, it becomes more prone to malfunctions, failure, and leaks.
  - Technological advances in the industries that previously relied on PCBs have made replacement of PCBs with various alternatives economically feasible.
- On April 7, 2010, EPA published an Advanced Notice of Proposed Rule-Making entitled "Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations" (75 FR 17645).

EPA Reassessment of the Current Regulations

- EPA has evaluated information and comments received in response to the ANPRM.
- EPA is currently evaluating whether the conditions under which the previous finding that "[the use authorization] will not present an unreasonable risk of injury to health or the environment." are still supportable for some PCB use authorizations at 40 CFR 761.40.
- Based on these evaluations, EPA is considering whether to eliminate or restrict certain use authorizations.
- In addition, EPA is considering changes that improve the transparency of the existing regulations and clarify certain regulatory terms.
- Should EPA eliminate or restrict certain use authorizations, there could be direct compliance costs for tribes that own PCB containing equipment.

Feedback from Consultation Meetings

- Four tribal participants.
- Comments and questions:
  - Tribal populations consume higher than average amounts of fish.
  - Participants expressed concern over the presence of PCBs in fish, and the potential sources of those PCBs.
  - Participants were generally supportive of restricting the current use authorizations.

IV. October 23, 2013 Spokane River Regional Toxics Taskforce Letter

SPOKANE RIVER
REGIONAL TOXICS TASK FORCE

COLLABORATION INNOVATION PROGRESS

Jim Jones
Assistant Administrator
Office of Chemical Safety and Pollution Prevention (OCSPP)
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 7101M
Washington, DC 20460

October 23, 2013

Cynthia Giles
Assistant Administrator
Office of Enforcement and Compliance Assurance (OECA)
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 2201A
Washington, DC 20460

RE: Implementation of TSCA to Address PCBs

Dear Mr. Jones and Ms. Giles:

The Spokane River Regional Toxics Task Force (Task Force) appreciates the EPA officials who met with us on June 17, 2013 to discuss the challenges we face in our watershed. EPA's regulatory role is an important factor in our ability to achieve the water quality standards for polychlorinated biphenyl (PCBs). It is evident from our analysis that a significant contribution of PCBs to the Spokane River watershed originate from sources currently allowable by Federal regulations under the Toxics Substance Control Act (TSCA). The Spokane River, as well as other rivers in the U.S. with Clean Water Act 303(d) listings for PCBs, will likely never meet Clean Water Act required state and tribal water quality standards as long as this EPA sanctioned allowance remains in place.

This is a national issue and not just isolated to the Spokane River watershed. There are almost 5,600 water bodies in the United States that are listed for PCBs[1] and more than 1,000 fish advisories for PCBs in 40 states[2]. PCB-contaminated fish are the primary source of PCBs for people in the United States[3]. PCBs continue to pose a real threat to human health and the environment[4].

The current TSCA allowance for inadvertently generated PCB of 50 ppm (with additional allowances for mono- and di-chlorobiphenyls) is not protective of the environment. An example of the ubiquitous distribution of PCBs resulting from TSCA are the findings that PCB-11, a congener specific to diaryl pigments, has been found in the waters of California, Delaware, Oregon, New York, New Jersey, Texas,

[1] http://iaspub.epa.gov/waters10/attains_nation_cy.control
[2] http://water.epa.gov/scitech/swguidance/fishshellfish/fishadvisories/
[3] http://www.atsdr.cdc.gov/csem/pcb/docs/pcb.pdf
[4] http://srrttf.org/wp-content/uploads/2012/09/ECOS-Resolution-12-9-PCBs-in-products-Approved-8-28-12.pdf

and Washington[5]. In addition to this, a recent survey by the Japanese Ministry of Economy, Trade, and Industry shows that imported pigments can contain PCB in levels exceeding the EPA limits of 25 ppm average/50 ppm maximum for inadvertently generated PCB. In one case, the level of PCB in a yellow pigment product was as high as 2000 ppm[6]

EPA's TSCA enforcement strategy[7] focuses on legacy facilities, but also supports actions that are of national benefit. The Task Force strongly requests that EPA implement a TSCA compliance monitoring program that addresses the manufacture in and import into the United States of products with inadvertently produced PCBs, such as pigments. Specifically, the Task Force requests increased enforcement of the existing TSCA regulations regarding *excluded manufacturing processes* and *excluded PCB products*, as defined in 40 C.F.R. § 761.3 and further described in Subpart J of 40 C.F.R. § 761.

More importantly, the Task Force requests that EPA ultimately eliminate the provisions under TSCA that allows for the continued manufacturing of products to contain inadvertently produced PCBs in order to ensure that our watershed can achieve State and Tribal water quality standards required under the Clean Water Act. Lowering the allowable limit under TSCA is not a viable solution when EPA's approved State and Tribal EPA's water quality standards are nearly one billion times lower than the current allowance. Furthermore, this allowance has shifted the cost from those permitted to manufacture these products to our municipal ratepayers and businesses that are ultimately burdened with cleaning up someone else's source of pollution. Our only opportunity for success in achieving stringent water quality standards and providing economic fairness is dependent upon the elimination of these new sources that continue to enter our environment.

We look forward to EPA's response regarding the above and what actions will be taken to resolve the inequity in Federal regulations that are currently not protective of the environment. You may send a response c/o Adriane Borgias, Washington State Department of Ecology, 4601 N. Monroe St. Spokane, WA 99205-1295; ABOR461@ecy.wa.gov; (509) 329-3515.

Sincerely,
Spokane River Regional Toxics Task Force

cc
Wendy Cleland-Hamnett, Director, EPA Office of Pollution Prevention and Toxics (OPPT)
Susan Shinkman, Director, EPA Office of Civil Enforcement (OCE)
Nancy Stoner, Acting Assistant Administrator, EPA Office of Water
Dennis McLerran, EPA Region 10 Regional Administrator
Ed Kowalski, Director, Office of Compliance and Enforcement, EPA Region 10
Lauris Davies, Associate Director, Office of Compliance and Enforcement, EPA Region 10
Dan Opalski, Director, Office of Water and Watersheds, EPA Region 10
Kate Kelly, Office of Air, Waste and Toxics, EPA Region 10

[5] Jia Guo in http://www.p2.org/wp-content/uploads/june-27-pcbs-webinar.pdf
[6] Christie in http://www.p2.org/wp-content/uploads/june-27-pcbs-webinar.pdf
[7] USEPA, *Compliance Monitoring Strategy for the Toxic Substances Control Act (TSCA)*, Office of Enforcement and Compliance Assurance, September 2011.

V. 2013 EO 13175 Tribal Leader Consultation Invitation Letter

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 3 1 2013

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

Dear Tribal Leader:

The U.S. Environmental Protection Agency is considering revisions to regulations that authorize certain uses of polychlorinated biphenyls. In January of 2012, EPA consulted with tribes on this matter under the EPA Policy on Consultation and Coordination with Indian Tribes. Since then the agency has determined that this rulemaking effort may have tribal implications under Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." As such, it is my pleasure to invite you to consult and exchange information with the agency about the potential regulatory approaches under consideration and how those approaches may affect tribes.

Section 6(e) of Toxic Substances Control Act bans the manufacture, processing, distribution in commerce, and use of PCBs, except when the EPA determines such uses would pose no unreasonable risk of injury to health or the environment. The EPA promulgated the first of several regulations that established authorizations for certain ongoing uses of PCBs more than 30 years ago. Among other uses, the EPA authorized the use of PCBs in certain electrical equipment, including capacitors and transformers, and in natural gas pipeline systems. These uses were authorized for a variety of reasons, including lack of cost-effective regulatory alternatives that would result in significantly reducing the risks associated with the remaining PCBs. Many of the use authorizations contain restrictions including testing and recordkeeping requirements. The use authorizations are codified in regulation at 40 CFR 761.30.

The agency's current rulemaking objective is to prevent future releases of and related exposures to PCBs by revising the current use authorizations for PCBs. The revisions under consideration are necessary because the circumstances surrounding the promulgation of previous PCB use authorizations have changed. Much of this PCB-containing equipment is beyond its predicted useable life and increasingly prone to breakdowns and spills of PCBs. The agency believes the most effective method of reducing use, distribution, and potential releases of PCBs in the United States is to consider modifications to the regulations that allow their continued use. By reassessing the PCB use authorizations, the EPA can account for present-day economic conditions and technological advances.

The revisions under consideration would primarily impact owners of PCB-containing electrical equipment and natural gas pipeline transmission and distribution companies. To the extent that tribes own PCB-containing electrical equipment, including PCB-containing small capacitors in fluorescent light ballasts, some of the rule options could result in direct tribal compliance costs. Perhaps most significantly, tribes that own school buildings may experience direct compliance costs.

My office will host an Executive Order 13175 consultation briefing about the rulemaking effort on December 12, 2013, from 10:00 am to 11:30 am EST and from 3:00 pm to 4:30 pm EST, in Room 4225 of the William Jefferson Clinton Federal Building East, 1201 Constitution Avenue, N.W., Washington, DC 20004. I hope you can join us to learn more about the issues and our rulemaking considerations.

At the briefing, the EPA will present background information on the rulemaking and will answer any questions you may have. You will have the opportunity to provide your input during the meeting and/or submit any written comments you wish to provide to the EPA within six weeks after the meeting. For now, I have enclosed a fact sheet that highlights the key aspects of PCB regulations under consideration for revision. The participant's call in number for both sessions is: 1-800-380-1073. The conference ID # for the 10:00 session is 98233044 and the conference ID # for the 3:00 session is 98235260. The operator will ask you for the conference ID #. If you plan to attend, or have any question or concerns about this meeting, please contact Tom Simons in the EPA's Office of Chemical Safety and Pollution Prevention at simons.tom@epa.gov or (202) 566-0517.

Sincerely,

Tanya Hodge Mottley

Tanya Hodge Mottley, Director
National Program Chemicals Division
Office of Pollution Prevention and Toxics

Enclosure
1. PCB Use Authorizations – Tribal Consultation Fact Sheet

VI. 2013 EO 13175 Tribal Leader Invitation Letter Fact Sheet

PCB Use Authorizations
Tribal Consultation Fact Sheet

BACKGROUND

Polychlorinated biphenyls (PCBs) belong to a broad family of man-made organic chemicals known as chlorinated hydrocarbons. PCBs were first domestically manufactured in 1929 and use continued with few restraints until the 1970s. During that period, PCBs were widely used in industrial and commercial applications including use in electrical, heat transfer, and hydraulic equipment. PCBs have long been recognized as having the potential to cause cancer. PCBs are associated with a wide variety of other human health effects. PCBs are persistent in the environment, bioaccumulate and biomagnify in food chains, and are toxic to humans as well as wildlife.
Section 6(e) of Toxic Substances Control Act (TSCA) banned the manufacture, processing, distribution in commerce, and use of PCBs, except where the Environmental Protection Agency (EPA) determined such uses would pose no unreasonable risk of injury to health or the environment. On May 31, 1979, EPA promulgated the first of several regulations that established authorizations for certain ongoing uses of PCBs (44 FR 31514). Among other uses, EPA authorized the use of PCBs in certain electrical equipment, including capacitors and transformers, and in natural gas pipeline systems. Many of such authorizations contained restrictions that include routine testing and recordkeeping requirements.

Over the past 30 years, however, the Agency has found that PCB releases are occurring. To prevent future releases of PCBs, EPA is developing a rulemaking to revise or revoke some of the use authorizations for PCBs at 40 CFR 761.30. The revisions under consideration are necessary because the circumstances surrounding the promulgation of previous PCB use authorizations have changed. Much of this PCB-containing equipment is beyond its predicted useable life and increasingly prone to breakdowns and spills of PCBs. The Agency believes the most effective method of reducing PCB use, distribution, and potential releases of PCBs in the United States is to consider modifications to the regulations that allow their continued use. By reassessing the PCB use authorizations, EPA can account for present-day economic conditions and technological advances.

The revisions under consideration would primarily impact owners of PCB-containing electrical equipment and natural gas pipeline transmission and distribution companies. To the extent that tribes own PCB-containing electrical equipment, including PCB-containing small capacitors in fluorescent light ballasts (FLBs), some of the rule options could result in direct tribal compliance costs. Perhaps most significantly school buildings owned by tribes may experience compliance costs.

OUTREACH TO DATE

General Outreach
On April 7, 2010, EPA published an Advanced Notice of Proposed Rulemaking (ANPRM) entitled "Polychlorinated Biphenyls (PCBs); Reassessment of Use

Authorizations" (75 FR 17645). EPA held public meetings to discuss the ANPRM from May to July 2010 in Atlanta, GA, Chicago, IL, New York, NY, San Francisco, CA, and Washington, DC. EPA also met with a number of interested trade associations, including the Utility Solid Waste Activity Group, the Institute for Scrap Recycling Industries, the American Gas Association, and the Interstate Natural Gas Association of America. In addition, EPA sent a representative to speak at the PCB Management National Convention for Electric Utilities in October of 2012 and 2013.

Tribal Outreach

Revisions to the PCB regulations could impact tribal governments to the extent that tribes own the regulated PCB-containing equipment. Accordingly, EPA began to coordinate and consult with federally recognized Indian tribes on the proposed regulatory revisions early in the rule development process.

In a letter dated December 15, 2011, EPA invited interested tribal leaders to consult on this rulemaking. The Agency held a consultation meeting with tribal leaders and their designees on January 17, 2012. The Agency updated the National Tribal Toxics Council on this rulemaking effort in January of 2012 and in June of 2013. EPA plans to continue outreach to tribal governments as the rulemaking progresses.

REGULATION REVISION

After reviewing public comments on the ANPRM, an effort was initiated to amend the regulations in order to:

- Take into account changed circumstances since the original promulgation of these use authorizations; and
- Reduce the potential for future spills and releases of PCBs by eliminating certain use authorizations and/or placing additional reasonable restrictions on these use authorizations.

KEY GOALS

1. **Reduce exposure to PCBs from PCB-containing small capacitors in FLBs:**
   - EPA has learned from several instances (e.g., PCB spills in New York City Schools) where PCB FLBs are still in use and often leak
   - EPA is concerned that the continued use of PCB FLBs could result in sensitive populations, such as school-aged children, being further exposed to PCBs

2. **Reduce the spills of PCBs from transformers by phasing out or imposing other restrictions on their use:**
   - PCB transformers (≥500 ppm PCBs) are the largest remaining reservoir of liquid PCBs in use
   - From 1999-2010, EPA is aware of 2,900 incidents involving a spill/fire with ≥ 1 lb PCBs; the majority of these incidents involved transformers

- EPA believes future spills (as many as 4,300) can be avoided by phasing out the use authorizations for PCB transformers and PCB-contaminated transformers (50-499 ppm PCBs)

3. **Increase transparency related to PCBs in natural gas pipelines:**
   - EPA is aware of several instances where PCBs have migrated to customers' meters and into structures (e.g., PCBs were found in homes and a church)
   - EPA is considering requiring notification to the affected customers

4. **Improve program operation, efficiency and administration:**
   - EPA is considering converting existing reporting requirements to an electronic format
   - EPA may make general modifications to the text of existing regulations to improve overall clarity and organization
   - EPA is considering removing the use authorizations for equipment that is categorically no longer in use (e.g., PCB railroad transformers)
   - EPA is considering phasing out the use authorizations for some other PCB-containing electrical equipment (e.g., switches, voltage regulations, circuit breakers, rectifiers), where few remain

TRIBAL IMPACTS

The proposed rule that EPA is developing would primarily impact owners of PCB-containing electrical equipment and natural gas pipeline transmission and distribution companies. To the extent that tribes own PCB- containing electrical equipment, including PCB FLBs, some of the rule options could result in direct tribal compliance costs.

COSTS & BENEFITS

Entities using PCBs pursuant to the use authorizations would bear the cost of the proposed regulatory changes under consideration. For the most part, this would include electrical utilities, natural gas transmission and distribution companies, and owners and operators of buildings with PCB FLBs.

In order to better understand the potential costs of modifying the regulations, EPA estimated the costs of phasing out the use authorization for PCB FLBs (PCB-containing small capacitors) for a hypothetical primary or secondary school. EPA assumed the school had 75,000 fluorescent-lit square feet and one lighting fixture per 100 square feet, or 750 fixtures in total. Costs are based on different estimates of the prevalence of PCB FLBs (percent of FLBs that contain PCBs) and, of those, the percent that are found to be leaking and subject to immediate replacement and disposal. Using these assumptions, up-front costs for a school with 75,000 square feet would range from $17,945 to $86,192. EPA also estimated the annual cost savings associated with switching to newer more energy efficient lighting equipment. Once one year's worth of energy cost savings is taken into account, net costs for a single school range from $17,032 to $77,114 (see Table 1).

Table 1. Up-Front Costs for PCB FLB Compliance

Cost Item	Low Prevalence Estimate	High Prevalence Estimate
Census Survey	$3,891	$3,891
Public Plan	$728	$728
Replace and Dispose of Leaking Ballasts	$8,357	$59,918
Replace and Dispose of Non-Leaking Ballasts	$6,076	$22,762
Total Costs	**$19,052**	**$87,299**
Energy Cost Savings	-$2,020	-$10,185
Net Total	**$17,032**	**$77,114**

Note that PCB FLBs were installed no later than 1979 and are at least 34 years-old and have already exceeded a rated lifetime of 15 years. Thus not all the costs of the replacement could be attributed to the rule. In the absence of the rule, PCB FLBs would eventually need to be replaced as they cease to function. Depending on the option selected, the rule, when finalized, could accelerate this process. By comparing the costs of replacing PCB FLBs due to natural attrition and the costs of replacing PCB FLBs under various rule scenarios, the *early* replacement cost borne due to the rule can be calculated. The annualized costs over a 20-year period for a single school due to surveying and replacing fixtures range from $383 to $1,755. As time goes on, more and more of the costs are due to the survey requirement (e.g., the need for building owners to examine their lighting fixtures to determine if any of the FLBs contain PCBs).

The other potentially effected PCB-containing equipment is similar to PCB FLBs, in that the equipment may be near the end of its useable life. Thus, revising the regulations could accelerate natural attrition. Thus the full cost of replacement is not attributed to the rule. As equipment gets nearer to the end of its life, the *early* replacement cost decreases. Table 2 summarizes EPA's estimated early replacement costs for various PCB containing equipment.

Table 2. PCB Equipment Unit Early Replacement Costs

	Per Unit Replacement Cost	Additional Cost for Early Replacement				
Compliance Date		2015	2018	2020	2025	2030
Compliance Years		0	3	5	10	15
Leaking FLBs	$177	$16	$0	$0	$0	$0
Non-Leaking FLBs	$78	$6	$0	$0	$0	$0
FLB Energy Cost Savings	-$16	-$1	$0	$0	$0	$0
Known PCB Transformers	$13,323	$4,129	$2,161	$1,286	$170	$0
Unknown PCB Transformers*	$13,323	$8,013	$4,120	$2,407	$276	$0
PCB-Contaminated Transformers	$14,046	$8,453	$4,355	$2,549	$297	$0
Voltage Regulators	$3,625	$2,181	$1,124	$658	$77	$0
Switches	$6,493	$3,907	$2,013	$1,178	$137	$0
Circuit Breakers	$5,100	$3,069	$1,580	$925	$107	$0
Rectifiers	$7,100	$4,045	$2,431	$1,661	$501	$3

*Transformers that are allowed to be assumed PCB-contaminated (pursuant to 40 CFR 761.2) but which upon testing are determined to be PCB Transformers (>500 ppm)

TIMELINE

The Agency currently expects to publish a proposed rule in 2014.

VII. November 15, 2013 National Tribal Toxics Council Letter

National Tribal Toxics Council

P.O. Box 15004 Flagstaff, AZ 86011
928-523-2005 Office 928-523-1266 Fax
www.tribaltoxics.org

November 15, 2013

Jim Jones
Assistant Administrator
Office of Chemical Safety and Pollution Prevention (OCSPP)
USEPA Headquarters
1200 Pennsylvania Avenue N. W.
Mail Code: 7101M
Washington, DC 20460

RE: Consultation on Reassessment of PCB Use Authorizations

Dear Mr. Jones:

Thank you for your continued support of the National Tribal Toxics Council's role in OPPT programs on issues related to chemical safety, toxic chemicals, and pollution prevention. Among the key issues that the NTTC is focusing on are ways to improve meaningful consultation with tribes on EPA's efforts to reduce exposure to toxic chemicals and prevent pollution in Indian Country. EPA's TSCA rules and regulations play on important role in limiting the release of toxic chemicals into the environment and it is essential that consultation with tribes on rulemaking that can impact tribal exposure to contaminants be thorough and broad in scope. Rulemaking and policy decisions on persistent organic chemicals such as polychlorinated biphenyls (PCBs) are of key importance in Indian Country and need to be meaningfully addressed through the consultation process.

The NTTC very much appreciates the opportunity that the December 12, 2013 consultation on PCB Use Authorizations offers to tribes. However, we believe that the tribes have legitimate concerns regarding the rulemaking that were not addressed in the consultation invitation or supporting materials that were emailed on November 7, 2013. While the fact sheet lists estimated compliance costs to tribes from early electrical equipment replacements and light ballast replacements and disposal, no information was provided on several other key issues that are of great significance to tribes. These include issues listed under sections VII, X, XI, and XII of the published rulemaking (Federal Register, April 7, 2010, Volume 75., No. 66) including: the use of the 50 ppm level for excluded PCB products; the use of non-liquid PCBs; the use and distribution in commerce of PCBs in porous surfaces; the marking of PCB articles in use; or the reassessment of the definitions of "excluded manufacturing process", "quantifiable level/level of detection", and "recycled PCBs".

The NTTC's preferred alternative to correcting these omissions would be to raise these issues during the December consultation and to provide in advance of the meeting, fact sheets and assessments of the magnitude of impact that the 50 ppm allowable import level has on tribal communities and first foods. The NTTC commits to supporting your office through outreach efforts to better educate and engage the tribal community on this important rulemaking. Tribal leaders will be able to provide information on disproportionate environmental and health impacts that PCB use and distribution has on our community through the consultation process. Please let us know how we can assist you in this effort.

Sincerely,

Dianne C Barton

Dianne Barton, Chair
National Tribal Toxics Council

CC:
Wendy Cleland-Hamnett, Director, EPA Office of Pollution Prevention and Toxics (OPPT)
JoAnn Chase, Director, American Indian Environmental Office
Caren Robinson, OCSPP Tribal Consultation Advisor
Nancy Stoner, Acting Assistant Administrator, EPA Office of Water
John Shoaff, Chief Liaison Branch, OPPT
Irina Myers, NTTC Project Officer, OPPT

VIII. December 6, 2013 Columbia River Inter-Tribal Fish Commission Letter

Letter

COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

700 NE Multnomah Street, Suite 1200
Portland, Oregon 97232

(503) 238-0667
F (503) 235-4228
www.critfc.org

December 6, 2013

Jim Jones
Assistant Administrator
Office of Chemical Safety and Pollution Prevention (OCSPP)
US EPA Headquarters
1200 Pennsylvania Avenue, NW
Mail Code: 7101M
Washington, DC 20460

RE: Reassessment of PCB Use Authorizations

Dear Mr. Jones:

The Columbia River Inter-Tribal Fish Commission (CRITFC) appreciates that EPA is revisiting the issue of authorized uses of polychlorinated biphenyls (PCBs) in regulations that were first promulgated more than thirty years ago. For the CRITFC-member tribes and their 20,000-plus enrolled members, toxins such as PCBs are of significant concern because of their chemical stability and propensity to persist in the environment, particularly in water, for many years. PCBs have made their way into the aquatic food chain that is integral to tribal First Foods, which tribal people have depended on for sustenance since time immemorial. Water, salmon and the other First Foods are fundamental to the CRITFC tribes' religion, culture and way of life. In addition, tribal treaties with the United States guaranteed that not only would salmon exist for us to take, but that those fish would be healthy and untainted by toxic pollutants.

PCBs are still available and are still contaminating the environment. Millions of pounds of PCB-contaminated liquids remain in aging, enclosed containers. Equally alarming is the fact that PCBs continue to be used or allowed in commercial products. Considering that PCBs have been found in dangerous concentrations in the Columbia River where Indians continue to actively fish, EPA's continued authorization of commercial PCB use is unsupportable and unacceptable. EPA has not fully or appropriately considered tribal rights, interests and concerns in this rulemaking. The agency has a trust responsibility to tribal governments[1], including a duty to safeguard tribal trust resources, and must consider the entire range of impacts to tribal communities of rules and regulations promulgated under the Toxic Substances Control Act (TSCA).

When the "PCB Reassessment of Use Authorizations" was first published in the Federal Register in 2010, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) submitted comments in a letter dated August 20, 2010 (enclosed) describing the impacts of PCBs on tribal fisheries and tribal people. The CTUIR requested that EPA specifically consider a reassessment

[1] *See, e.g., Nance v. EPA*, 645 F.2d 701, 711 (9th Cir. 1981).

of the 50 ppm level for excluded PCB products in the rulemaking. EPA, however, did not consult with any tribes to our knowledge and issued an agency notice, dated April 5, 2013 (EPA-HQ-OPPT-2012-0902; FRL-9382-9), that reconfirmed regulations allowing materials containing less than 50 ppm of PCBs to be categorized as "excluded PCB products."

As the 2010 CTUIR letter clearly states, trace levels of PCBs currently permitted by EPA affect tribal people and resources. In addition, states and tribes in the Pacific Northwest have established, or are in the process of establishing, water quality standards using human health criteria that more accurately reflect true tribal fish consumption. Compliance with these standards that have or will require EPA approval will be difficult if not impossible if trace amounts of PCBs are allowed in certain commercial products.

CRITFC looks forward to discussing the rulemaking during the December 12, 2013, conference call.[2] For a meaningful discussion of the reauthorization rulemaking, we ask that EPA specifically address inadvertent generation of PCBs, a path forward to resolve this issue, and a timeline for when TSCA provisions allowing low levels of PCB can be ultimately eliminated. Tribal staff will be able to provide additional information on the disproportionate environmental and health impacts that PCB use and distribution have on our communities.

Thank you for your attention to our comments and suggestions. If you have any further questions please contact me or Aja DeCoteau at 503-238-0667.

Sincerely,

Joel Moffett

Joel Moffett
Chairman

Enclosure

Cc: Wendy Cleland-Hamnett, Director, EPA Office of Pollution Prevention and Toxics
JoAnn Chase, Director, American Indian Environmental Office
Caren Robinson, Tribal Consultation Advisor, Office of Chemical Safety & Pollution Prevention
Nancy Stoner, Acting Assistant Administrator, EPA Office of Water

[2] Please note that while we appreciate EPA arranging this discussion, a multi-party group conference call does not constitute appropriate government-to-government consultation. We encourage the agency to consider individual formal consultation with each of the tribes that desire it as soon as is practicable.

IX. December 12, 2013 – EO 13175 PCB Use Authorizations Update Rule Consultation Presentation

PCB Use Authorizations Update Rule

E.O. 13175: Tribal Consultation

December 12, 2013

Purpose and Agenda

- Purpose:
  - To provide an overview of potential changes under consideration
  - Answer questions and get feedback
- Agenda:
  - Tribal Consultation Overview
  - Background on PCB Use Authorizations (40 CFR part 761)
  - Your Comments: Helpful Information
  - EPA Rule Options Under Consideration
    - Small Capacitors in Fluorescent Light Ballasts
    - Transformers and Other Electrical Equipment
    - Natural Gas Pipelines
    - Contaminated Porous Surfaces
  - Next Steps

Tribal Consultation Policy/ E.O. 13175

- EPA's policy is to consult on a government-to-government basis with federally recognized tribal governments when EPA actions and decisions may affect tribal interests
- E.O. 13175 requires meaningful and timely consultation when actions have substantial direct effects on tribes
- EPA recognizes and works directly with federally recognized tribes as sovereign entities with primary authority and responsibility for each tribe's land and membership, and not as political subdivisions of states or other governmental units
- EPA ensures the close involvement of tribal governments and gives special consideration to their interests whenever EPA's actions may affect Indian country or other tribal interests

Background on PCB Use Authorizations

- Section 6(e) of the Toxic Substances Control Act banned the manufacture, processing, distribution in commerce, and use of polychlorinated biphenyls (PCBs), except when uses would pose no unreasonable risk of injury to health or the environment
- On May 31, 1979, EPA promulgated regulations (at 40 CFR part 761) that established authorizations for certain ongoing uses of PCBs (44 FR 31514)
- EPA has initiated this rulemaking to revise or end some authorized uses of PCBs, in part because the conditions under which they were authorized more than 30 years have changed

Background on PCB Use Authorizations

- On April 7, 2010, EPA published an Advanced Notice of Proposed Rulemaking (ANPRM) entitled “Polychlorinated Biphenyls: Reassessment of Use Authorizations”
  - EPA requested comment on:
    - The cost of conversion to non-PCB-containing equipment
    - Disposal costs
    - Use of substitutes
    - The potential impact that a rulemaking might have on disparate communities and small business owners

Tribal Comments

Helpful Information:

- Consider how the options presented might create compliance costs for tribes
- Provide specific examples of impacts and suggestions on how to mitigate these impacts
- Provide cost data, if available
- Suggest other relevant options, provide data on their costs and information on how to ensure compliance

Potentially Impacted Sectors

- Utilities
- Natural gas transfer or distribution companies
- Schools
- Daycares
- Commercial building owners
- Governments or other entities with public buildings
- Other industries that have PCB electrical equipment

PCB Small Capacitors in Fluorescent Light Ballasts (FLBs)

- PCB-containing small capacitors are authorized for use indefinitely and are present in FLBs manufactured before 1979
- We have learned from incidents in schools (e.g., NYC schools) that many of these PCB FLBs are still in use and often leak
- A DOE energy efficiency rule is accelerating the removal of old FLBs nationwide

PCB Small Capacitors in Fluorescent Light Ballasts

The PCB FLB Universe Preliminary Estimates

Building Type	Number [1] of Buildings that May Have PCB-containing FLBs in 2015 [2]	Number of PCB-containing FLBs in 2015 [3]	Number of Leaking PCB-containing FLBs in 2015 [4]	Number of Leaks avoided through early removal (1/3/5 year compliance options)
Daycares	<10,000	500,000	300,000	<50,000/<3,000/0
Hospitals	<1,000	800,000	500,000	<65,000/<5,000/0
Primary and Secondary Schools	<25,000	2.6 million	1.8 million	200,000/<15,000/0
Public Housing	100,000	1.3 million	900,000	100,000/<10,000/0
Other Public and Commercial Buildings	500,000	37.7 million	27.2 million	3.1 million/200,000/0

[1] Pre-1980 buildings, fluorescent lighting, no major lighting retrofit based on 2003 Department of Energy survey data, Census data and NCES data
[2] Estimated date for final rule promulgation
[3] Based on 17% of total FLBs (PCB and non-PCB)
[4] Based on 38% of total PCB-containing FLBs

PCB Small Capacitors in Fluorescent Light Ballasts

Potential Regulated Universe Options:

1. Daycare centers and primary and secondary schools
2. Daycare centers, primary and secondary schools, hospitals and public housing
3. All public and commercial buildings (includes Options 1 and 2 above and other buildings)

PCB Small Capacitors in Fluorescent Light Ballasts

PCB FLB Option I: Revoke the use authorization for PCB small capacitors in FLBs*

a) Phase-out the use of PCB FLBs in 1 year
   1. Require signed statement based either on records that building has no PCB FLBs for exemption or inspection of subset of FLBs to determine presence of PCBs for inclusion

- Cost Range**: $4.0 - $62.7 million

b) Phase-out the use of PCB FLBs in 3 or 5 years, and
   1. Require inspection of all FLBs in 1 year to find leaking FLBs and require publicly available PCB FLB management plan for replacement

- Cost Range: $8.6 - $132.5 million

   2. Require inspection of all FLBs in 1 year to find leaking FLBs and periodic surveillance (e.g. every 6 months) and require publicly available PCB FLB management plan for replacement

- Cost Range: $10.0- $158.1 million

   3. No specific inspection or periodic surveillance required and require publicly available PCB FLB management plan for replacement

- Cost Range: $ 0. 0 - $41.1 million

NOTE: Cost ranges are dependent on the regulated universe chosen (e.g., schools, commercial bldgs., etc.)

*For 1 and 3 year options, consider providing a one-time extension provision (requiring justification) for entities that are not able to meet the phase-out requirement

PCB Small Capacitors in Fluorescent Light Ballasts

PCB FLB Option II: Revise the use authorization for PCB small capacitors in FLBs to identify leaking PCB FLBs

a) Require inspection of all FLBs in 1 year to find leaking FLBs and require publically available data on the location of leaking PCB FLBs

Cost Range: $9.8 - $148 million

b) Require inspection of all FLBs for presence of PCBs and whether leaking in 1 year and require publically available data on all PCB FLB locations including whether they are leaking

Cost Range: $9.8 - $148 million

NOTE**: Cost ranges are dependent of regulated universe chosen (e.g., schools, commercial bldgs, etc.)

PCB Small Capacitors in Fluorescent Light Ballasts

Options	Schools & Daycares	Schools, Daycares, Hospitals, & Public Housing	All Public & Commercial Buildings
Revoke the Use Authorization for PCB Small Capacitors in FLBs within 1 Year	$4.0 million	$7.6 million	$62.7 million
Revoke the Use Authorization for PCB Small Capacitors in FLBs in 3 Years and Require Inspection of all FLBs within 1 Year	$8.6 million	$20.6 million	$132.5 million
Revoke the Use Authorization for PCB Small Capacitors in FLBs in 5 Years and Require Inspection of all FLBs within 1 Year	$8.6 million	$20.7 million	$132.3 million
Revoke the Use Authorization for PCB Small Capacitors in FLBs in 3 Years with Inspection of all FLBs within 1 year and Periodic Surveillance Every 6 months	$10.0 million	$22.9 million	$151.7 million
Revoke the Use Authorization for PCB Small Capacitors in FLBs in 5 Years with Inspection of all FLBs within 1 year and Periodic Surveillance Every 6 months	$10.5 million	$23.7 million	$158.1 million
Revoke the Use Authorization for PCB Small Capacitors in FLBs in 3 Years with no Specific Inspection Required	$2.7 million	$6.4 million	$41.1 million
Revoke the Use Authorization for PCB Small Capacitors in FLBs in 5 Years with no Specific Inspection Required	*$0.0 million	*$0.0 million	*$0.0 million
Revise the Use Authorization for PCB Small Capacitors in FLBs to Require an Inspection of all FLBs to find leaking FLBs within 1 Year	$9.8 million	$22.5 million	$148.0 million
Revise the Use Authorization for PCB Small Capacitors in FLBs to Require an Inspection of all FLBs to find leaking and/or non-leakers FLBs within 1 Year	$9.8 million	$22.5 million	$148.0 million

***Note-** **This option does not provide any additional environmental or health benefits since it would follow the natural attritional date (2020) based on T12 lamp shipment rate estimates from the National Electrical Manufactures Association.**

How This Could Affect a Hypothetical School

- Unit Costs
  - Inspection: $5.19 / fixture (based on $17.29 x 2 janitors x 9 minutes per fixture)
  - Disposal: $8.36 / leaking ballast and $3.23 / non-leaking ballast (including drums and shipping costs)
  - Replacement: $168.23 / fixture with leaking ballast(s) and $75.00 / fixture without leaking ballast(s) (with parts and labor included)
- Using these assumptions, up-front costs for a hypothetical school with 75,000 square feet would range from $17,032 - $77,114 (accounting for one year's worth of energy savings)

PCB Small Capacitors in Fluorescent Light Ballasts

- Questions
  - Do you have information regarding the degree to which tribal school building(s) or public or commercial buildings (built before 1979) have FLBs that contain polychorinated biphenyls PCBs?
  - Do you have information regarding the degree to which tribal school building(s) or public or commercial buildings (built before 1979) have performed lighting efficiency upgrades?
  - Do you have information pertaining to how tribes have funded lighting retrofits (especially where PCB-containing light ballasts were removed)?

PCB Small Capacitors in Fluorescent Light Ballasts

- Questions (continued)
  - Do you have information pertaining to either the process or the length of time it takes for local education agencies (e.g., school districts) or owners of public or commercial buildings to:
    - 1) inspect lighting systems for PCB-containing FLBs;
    - 2) request funding to perform lighting retrofits and remove PCB-containing FLBs;
    - 3) acquire funding to perform such retrofits;
    - 4) plan the specific retrofits; and
    - 5) complete the retrofits of lighting systems?

Transformers and Other Electrical Equipment

- PCB transformers (≥500 ppm) are the largest remaining reservoir of liquid PCBs in use
  - Approximately 80,000 remain in use
- Approximately 800,000 PCB-contaminated transformers (50 to <500 ppm) remain in use
- Industry commenters asserted that all PCB transformers and PCB-contaminated transformers will be disposed of by 2030 through attrition and voluntary replacement efforts
- PCB are also authorized for use in other electrical equipment (e.g., switches, voltage regulators, circuit breakers, large capacitors, electromagnets, rectifiers, reclosers, cable and railroad transformers)
  - Little if any of this equipment still exists or currently contains PCBs

Transformers and Other Electrical Equipment

Options: PCB transformers (≥500 ppm)

1. Revoke use authorization for known and will-be-known PCB transformers in 5, 10, or 15 years

   - Costs: 5 yrs - $500K, 10 yrs – $20K, 15 yrs - $0.0

2. Disallow storage for reuse of PCB transformers 1 year from effective date

   - Costs: 1 yr -$900K, 2 yrs - $600K, 5 yrs - $200K, 10 yrs - $20K

3. Require transformer owners who dispose of or reclassify to < 50 ppm to deregister them from our database via e-reporting

   - Cost: (same as registering: 15 mins/$12 per report): $1.4K

Transformers and Other Electrical Equipment

Options: PCB-contaminated (≥50-499 ppm) transformers

1. Revoke use authorization or require reclassification within 5, 10, or 15 years
   - Costs: 5 yrs - $900K, 10 yrs - $40 K, 15 yrs - $0.0
2. Disallow servicing except to reclassify (<50 ppm) effective immediately or within 5 or 10 years after effective date
   - Costs: effect. Immed. - $8M, 5 yrs - $900K, 10 yrs - $40K
3. Revoke storage for reuse allowance in 1, 2, 5, or 10 years after effective date
   -Costs: 1 yr - $114.7M, 5 yrs - $76.6M, 10 yrs - $900K
4. Amend 761.180(b) to require annual reporting of the number disposed
   - Cost: (15 mins/$12 per transformer): $600K

Transformers and Other Electrical Equipment

- Questions:
  - To your knowledge, do tribes own any PCB electrical equipment? If so, how prevalent is this equipment?
  - To what extent is this equipment being taken out of service (disposed of, reclassified, sold)? Is this being done by attrition, or as part of a removal (phase-out) program?
  - Do you store any of this equipment for reuse?
  - If you retain inventories of PCB electrical equipment, why (given that new equipment is more energy efficient, can better handle the current electrical loads, and that PCB spills can be costly to cleanup)?
  - What effect would a 2015, 2020, 2025, or 2030 phase out date have on tribes that own PCB electrical equipment? How much lead time is required?

Natural Gas Pipelines

- Subject to certain requirements, EPA has authorized:
  - The use and reuse of PCBs in natural gas pipeline systems
  - The use and reuse of PCB-contaminated natural gas pipe and appurtenances
- PCBs still contaminate many systems and the original 1998 regulations have deficiencies
- EPA is aware of several instances of PCBs being discovered in customers meters and beyond

Natural Gas Pipelines

Options: Release Reporting and Response Options:

1. Require e-reporting to EPA regions and/or the affected/ potentially affected customer(s) of releases of PCBs ≥50 ppm to customer meters and appurtenances
2. Upon request develop and submit to EPA regions remediation plans for such releases

General Reporting Option:

- Require e-reporting to EPA regions of all discoveries of PCBs ≥50 ppm

Natural Gas Pipelines

Options:

General System-Wide Reduction Measures Option:

- Require one time sampling of all pre-1978 compressors within 1 year of rule, unless owners can provide historical data from prior sampling

Use Authorization Changes for Sampling Option:

- Modify 761,30(i)(1)(iii)(B) to explicitly require individual as opposed to batch sampling of organic liquids removed from natural gas systems for ≥ 50 ppm PCBs

Natural Gas Pipelines

- Questions
  - Would tribes anticipate any direct compliance costs associated with the options EPA is considering?
  - If so, what would those compliance costs be? Are there ways to mitigate them?

Contaminated Porous Surfaces

- Current regulation (§761.30(p)) allows the ongoing use of concrete and other porous surfaces contaminated by spills of liquid PCBs regulated for disposal
  - Spilled PCBs may be left in place if surface is covered and labeled
- Questions
  - To your knowledge, do tribes utilize this use authorization?

Next Steps

- Do you have any additional information that EPA should be aware of?
  - If so, please provide.
- Do you have any other approaches that you would like EPA to consider?
- Comments will be due to EPA in approximately 8 weeks, on February 12, 2014
- Please send written comments to: Simons.Tom@epa.gov and copy Kemme.Sara@epa.gov

Questions and Comments

Thank you!

- Project Contacts:

Tom Simons
(202) 566-0517
Simons.Tom@epa.gov

Sara Kemme
(202) 566-0511
Kemme.Sara@epa.gov

X. January 28, 2014 Columbia River Inter-Tribal Fish Commission Letter

COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

700 NE Multnomah Street, Suite 1200
Portland, Oregon 97232

(503) 238-0667
F (503) 235-4228
www.critfc.org

January 28, 2014

JoAnn Chase
Director
American Indian Environmental Office
USEPA Headquarters
1200 Pennsylvania Avenue, NW
Mail Code: 2690M
Washington, DC 20460

RE: December 12, 2013 Tribal "Consultation"

Dear Ms. Chase:

On December 12, 2013 we attended the PCB Use Reauthorization rulemaking consultation held in Washington DC. On behalf of the Columbia River Inter-Tribal Fish Commission, we came to express our four member tribes' (Warm Springs, Umatilla, Nez Perce, and Yakama) concerns regarding the impact of PCBs on our fishery resources. While we appreciate EPA's willingness to host a second consultation opportunity for tribes to provide input on this rulemaking, we have several concerns regarding the process that was used to fulfill EPA's obligation to consult with tribes during the rulemaking.

We expected this meeting to be an opportunity for meaningful communication as equals and partners with EPA leadership and staff, as described in EPA's *Policy on Consultation and Coordination with Indian Tribes* (May 2011). We looked forward to discussing how EPA's policies on allowable PCB uses pose challenges for states and tribes in meeting EPA-approved water quality standards that are protective of high fish consuming populations such as the tribes. What transpired, however, is better described as an informational session rather than an opportunity for meaningful and productive government-to-government consultation. The one-sided agenda did not even include time for airing tribal perspectives or discussing EPA policies on limiting PCB release into the environment. To say we were sorely disappointed would be an understatement.

Consultation is the formal process of negotiation, cooperation, and policy-level decision-making between a sovereign tribal government and the United States federal government. It is imperative that EPA's American Indian Environmental Office better prepare the Agency for a meaningful and productive government-to-government exchange.

Your office should be aware that the rulemaking in question, and any EPA policy or rule that impacts persistent organic pollutants in our environment is of great concern to the tribes. The attached letter, dated December 20, 2013 from EPA, to our Commission stands as an example of

an EPA decision to specifically not consult with tribes. In the letter, EPA suggests that the tribes should have followed the public comment process on the April 5, 2013 notice of interpretation of allowable PCB levels in commercial products. We ask that your office take a stronger role as a watchdog on the behalf of the tribes and request formal consultation on any policy decision made on persistent pollutants such as PCBs. Your office could also better support the consultation process by facilitating the meetings to allow for full tribal input and policy-level discussions. In this way, the opportunity for meaningful dialogue with the tribes on critical issues will not be missed by the EPA.

Thank you for considering our comments and suggestions. If you would like to discuss our suggestions in further detail please contact us through the Commission at 503- 238-0667.

Sincerely,

Joel Moffett

Joel Moffett
CRITFC Chair
Vice-Chairman, Nez Perce Tribal Executive Committee

Wilbur J. Slockish Jr.

Wilbur Slockish Jr.
CRITFC Commissioner
Columbia River Chief representing the Yakama Nation

Cc: Wendy Cleland-Hamnett, Director, EPA Office of Pollution Prevention and Toxics
Caren Robinson, OCSPP Tribal Consultation Advisor

XI. January 29, 2014 & No Date Lower Elwha Klallam Tribe Letter

LOWER ELWHA KLALLAM TRIBE

ʔəʔɬx̣ˇə nəxˇsƛ̓'ay'əm "Strong People"

2851 Lower Elwha Road
Port Angeles WA 98363

(360) 452-8471
Fax: (360) 452-3428

RECEIVED 1/29/15

Jim Jones
Assistant Administrator
Office of Chemical Safety and Pollution Prevention (OCSPP)
USEPA Headquarters
1200 Pennsylvania Avenue, N. W.
Mail Code: 7101M
Washington, DC 20460

RE: Response to Tribal Consultation E.O. 13175, December 12, 2014, PCB Use Authorizations Request for EPA to Address Other Sources of PCBs

Dear Mr. Jones:

The Lower Elwha Klallam Tribe supports the revisions under consideration to revise the current use authorizations for PCBs as described during the December 12, 2013 Tribal Consultation. The revisions under consideration to revise the current use authorizations for PCBs as described during the December 12, 2013 Tribal Consultation are acceptable as a first step toward addressing PCBs in the environment. However, EPA should work on developing an action plan to control other key issues presented in the original 2010 Advance Notice of Proposed Rulemaking on PCBs; Reassessment of Use Authorizations, such as:

- use of the 50 ppm level for excluded PCB products (such as caulk, paint, dyes, pigments, and inks)
- reassessment of the definitions of "excluded manufacturing process", "quantifiable level/level of detection", and "recycled PCBs"

These issues concern the health of our people and environment were omitted from the December 12, 2013 Consultation and not discussed with tribes.

We are concerned with the following sources of PCBs and recommend EPA take action to prevent future releases of and related exposures to PCBs caused by these sources:

- Capacitors, switches, and other electrical equipment not specified in the December 12, 2013 Consultation.
- Dyes, pigments, and inks used in clothing, napkins, printing of newspapers, magazines, and

numerous other materials.

- Uncontained PCBs in Building Materials: Caulking, paint, acoustic ceiling tile treatment, wood floor finish.
- PCBs in sediments and soils impacted by previous spills and historical use sites.

EPA's TSCA rules and regulations play on important role in limiting the release of toxic chemicals into the environment and it is essential that early consultation with tribes on future rulemaking that can impact tribal exposure to contaminants be thorough and broad in scope. Rulemaking and policy decisions on persistent organic chemicals such as PCBs are of key importance in Indian Country and need to be meaningfully addressed through the consultation process. Therefore, we would like EPA to provide information on intended actions to address PCB sources that pose immediate concern to the health of our people and environment and were not addressed in the December 2013 Consultation. This will allow our tribe the opportunity to provide meaningful input on the original rulemakings prior to EPA formalizing the rule for public comment.

To coordinate the consultation on future action for eliminating PCBs in our environment, please contact Larry Dunn at (360) 452-8471 ext. 7428.

Sincerely,

Frances S. Charles

Frances Charles,
Tribal chairperson of the Lower Elwha Klallam Tribe

cc

Wendy Cleland-Hamnett, Director, EPA Office of Pollution Prevention and Toxics (OPPT)
JoAnn Chase, Director, American Indian Environmental Office
Caren Robinson, OCSPP Tribal Consultation Advisor
Nancy Stoner, Acting Assistant Administrator, EPA Office of Water

LOWER ELWHA KLALLAM TRIBE

ʔəʔɬx̣ʷə nəxʷsƛ̓ay̓əm "Strong People"

2851 Lower Elwha Road
Port Angeles WA 98363

(360) 452-8471
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Jim Jones
Assistant Administrator
Office of Chemical Safety and Pollution Prevention (OCSPP)
USEPA Headquarters
1200 Pennsylvania Avenue, N. W.
Mail Code: 7101M
Washington, DC 20460

RE: Request for Government-to-Government Consultation
Reassessment of PCB Use Authorizations

Dear Mr. Jones:

The Lower Elwha Klallam Tribe formally requests government-to-government consultation with EPA regarding the Reassessment of PCB Use Authorizations due to the inadequate consultation invitation provided previously. The consultation invitation and the January 2012 National Consultation phone calls on "Reassessment of PCB Use Authorizations" did not address key issues in the rulemaking or provide supporting materials.

The 2012 Consultation Plan specifically addressed the continued use and spills from PCB containing equipment and light ballasts. However, we have recently learned that the following issues that concern the health of our people and environment also fall under the proposed rule-making and were omitted from the 2012 Consultation Plan:

- use of the 50 ppm level for excluded PCB products (such as caulk, paint, dyes, pigments, and inks)
- use of non-liquid PCBs
- use and distribution in commerce of PCBs in porous surfaces
- marking of PCB articles in use; or
- reassessment of the definitions of "excluded manufacturing process", "quantifiable level/level of detection", and "recycled PCBSs"

EPA's TSCA rules and regulations play on important role in limiting the release of toxic chemicals into the

environment and it is essential that consultation with tribes on rulemaking that can impact tribal exposure to contaminants be thorough and broad in scope. Rulemaking and policy decisions on persistent organic chemicals such as polychlorinated biphenyls (PCBs) are of key importance in Indian Country and need to be meaningfully addressed through the consultation process. Therefore, we would like EPA to provide information or proposed alternatives to the issues that pose immediate concern to the health of our people and environment. This will allow The Lower Elwha Klallam tribe an opportunity to provide meaningful input on the rulemaking prior to EPA formalizing the rule for public comment.

To coordinate the consultation, please contact Larry Dunn (360 452-8471 ext. 7428).

Sincerely,

Frances S. Charles

Frances Charles Tribal Chair, Lower Elwha Klallam Tribe

cc

Wendy Cleland-Hamnett, Director, EPA Office of Pollution Prevention and Toxics (OPPT)
JoAnn Chase, Director, American Indian Environmental Office
Caren Robinson, OCSPP Tribal Consultation Advisor
Nancy Stoner, Acting Assistant Administrator, EPA Office of Water

XII. February 13, 2014 Columbia River Inter-Tribal Fish Commission Letter

COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

700 NE Multnomah Street, Suite 1200
Portland, Oregon 97232

(503) 238-0667
F (503) 235-4228
www.critfc.org

February 13, 2014

Tom Simons
US Environmental Protection Agency
EPA West Building
National Program Chemicals Division
1200 Pennsylvania Avenue NW
Mail Code 7404T
Washington, DC 20460

RE: Reassessment of PCB Use Authorizations

Dear Mr. Simons:

The Columbia River Inter-Tribal Fish Commission (CRITFC) appreciates that the EPA has proposed to end some of the authorized uses of polychlorinated biphenyls (PCBs). There are over 20,000 enrolled citizens within CRITFC's member tribes, and persistent bioaccumulative toxics such as PCBs are of great concern because they have made their way into the aquatic food chain that sustains the fishery resource, which is central to our culture and way of life.

Three months ago, the Oregon Health Authority and the Washington Department of Health issued a fish consumption advisory for the mid-Columbia River because of PCB contamination. This was devastating news for all of the tribes that live and rely upon the resources provided by this river. Our fishery now joins over 5,500 water bodies in the United States that are impaired because of PCBs, according to the EPA Watershed Assessment, Tracking and Environmental Database.

The PCB Use Authorization rulemaking that has been proposed could result in the early retirement of the largest contained sources of PCBs and we appreciate that progress is finally being made to address these sources of PCBs. However, more must be done to eliminate PCBs from commercial products as well. In the December 20, 2013 letter from Wendy Cleland-Hamnett to CRITFC (attached), your agency states that reconsideration of the 50 parts per million level for excluded PCB products will require substantial and lengthy analytical efforts. Today, we have a great deal of evidence that supports the need to take action to reduce or eliminate as many sources of PCBs as possible. For example, a recent study done by King County, Washington's Water and Land Resources Division[1], on Lake Washington shows that a total load reduction of 85% will be required to reach safe levels in fish tissue based on Department of Health 46 ppb fillet recommendation. This documented study is an example of

[1] *http://www.ecy.wa.gov/programs/swfa/pbt/docs/pcb2-KingCountyPCBStudies.pdf*

the challenges faced by the resource managers of waterbodies that are impaired by PCB contamination.

In addition to these challenges, states and tribes in the Pacific Northwest have established, or are in the process of establishing, human health criteria based water quality standards that more accurately consider tribal fish consumption. Oregon now has surface water quality standards of 175 grams per day. The states of Washington and Idaho are both in the process of developing more stringent water quality standards that will account for tribal fish consumption patterns. In December 2013, the EPA approved the Spokane Tribe's fish consumption rate of 865 grams per day for establishing the human health criteria for on reservation surface water quality standards. Compliance with these EPA-approved standards will be nearly impossible until the PCB problem is adequately addressed.

Continued reliance on 30 year old regulations is obviously not working to keep our fishery resources safe for human consumption. Now is time for EPA to develop a new comprehensive strategy and action plan for addressing the national problem of PCB contamination of our nation's waters. I appreciate EPA taking a first step in preventing future releases of PCBs from enclosed containers, but we ask that this not be the only step that EPA takes in helping us in protecting the Columbia River.

Thank you for considering our comments and suggestions. If you have any further questions please contact me or Aja DeCoteau at 503-238-0667.

Sincerely,

B. Paul Lumley

Babtist Paul Lumley
Executive Director

Attachment

Cc: Wendy Cleland-Hamnett, Director, EPA Office of Pollution Prevention and Toxics
Nancy Stoner, Acting Assistant Administrator, EPA Office of Water
Dennis McLerran, Administrator, EPA Region 10
Jim Woods, Tribal Liaison, EPA Region 10

XIII. February 13, 2014 Confederated Tribes of the Umatilla Indian Reservation Letter

Confederated Tribes *of the*
Umatilla Indian Reservation

Board of Trustees & General Council

46411 Timíne Way • Pendleton, OR 97801
(541) 276-3165 • fax (541) 276-3095
info@ctuir.org • www.umatilla.nsn.us

Via U.S. Mail / E-Mail

February 13, 2014

Ms. Gina McCarthy
Administrator
Office of the Administrator (4101M)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington D.C. 20460

Re: Comments on EPA's Continued Authorization of the Use of PCBs

Dear Administrator McCarthy:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) appreciates the efforts of the U.S. Environmental Protection Agency (EPA) to address the problem of polychlorinated biphenyls (PCBs) in the environment. We support your on-going work to reduce and remediate PCBs from "legacy" sources. However, much more can and should be done to phase out ***all*** PCB uses and the generation of new PCB sources and products and their concomitant wastes. CTUIR urges EPA to halt further additions to the already-daunting burden of PCBs plaguing our people and communities.

EPA should change its policy and revise its rules which currently allow up to 50 parts per million (ppm) of PCBs in new "excluded" products. EPA policies and rules should not allow ***any*** PCBs in such products; the allowable limit should be ***zero*** (0). CTUIR opposes any rules that leave unchanged the current 50 ppm allowable limit.

In 2010, EPA announced that it would reconsider the authorized uses of PCBs.[1] In response to your notice, CTUIR submitted comments in a letter dated August 20, 2010. A copy of that letter is attached. We asked that you specifically reconsider the allowable 50 ppm PCB limit, and revise your rules so that new PCB sources are ultimately prohibited. We reiterate our earlier comments, which are incorporated herein by reference.

Nevertheless, EPA decided not to modify this aspect of the rules and left unchanged the 50 ppm limit. EPA's decision was made without the appropriate level of government-to-government consultation with affected Indian tribes. This decision is inconsistent with President Obama's November 5, 2009, "Memorandum for the Heads of Executive Departments and Agencies" on the subject of Tribal Consultation, which affirmed President Clinton's Executive Order 13175 of November 6, 2000, and charged federal agencies with "engaging in regular

[1] Advance Notice of Proposed Rulemaking: Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations; Docket ID No. EPA-HQ-OPPT-2009-0757, Federal Register, Vol. 75, No. 66 (April 7, 2010).

and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications."

EPA sought to obtain limited tribal input on December 12, 2013, when EPA Headquarters conducted two meetings/conference calls with tribal representatives.[2] During these meetings/calls, tribal representatives (including senior elected and policy representatives from CTUIR) again raised the issue of the 50 ppm allowable PCB limit, but the participating non-policy-level EPA staff dismissed our concerns and questions. The number and geographic range of tribal representatives trying to participate demonstrates that this issue is of significant interest to tribes across the country. Members of the Affiliated Tribes of Northwest Indians (ATNI)[3] are considering a resolution calling for EPA to eliminate the 50 ppm PCB allowance at its convention next week. Given this substantial tribal interest and concern, you should be aware that any rules perpetuating the presence of PCBs in "excluded" products risk administrative and/or legal challenge.

Continuing to permit PCBs in amounts of up to 50 ppm is not supported by any public health-based rationale. The existing rules are more than thirty years old and by EPA's own admission, are "based almost entirely on economic considerations."[4] PCBs already contaminate our fish and our water. They are a serious problem in the Pacific Northwest and throughout the nation. Only a few months ago another fish advisory was issued warning of PCBs in the Columbia River, in the primary zone where tribal fishing takes place.[5] PCBs bio-accumulate. They do not degrade, nor do they dissipate. No amount is "too small" or safe. Any new sources merely exacerbate the already-existing problem of excessive PCBs in the environment. Allowing more only adds to the overall burden, and does nothing to diminish that burden.

Water and salmon are among our tribal First Foods. They are first in the serving order during our longhouse ceremonies. PCBs threaten these foods and our people. The risks to tribal peoples, other fish consumers, and the environment from PCBs far outweigh any possible "economic considerations" on which EPA "almost entirely" based its antiquated rules. In the Treaty of 1855 with the United States,[6] CTUIR secured forever our long-standing "right of taking fish" from the Columbia River and its tributaries. That right meant then, and still means now, clean fish, fish without toxic contaminants. Unfortunately, that right has been ignored and undermined. Allowing even more PCB contamination further disregards our Treaty Rights and heightens the risks to our people. Fish consumption is part of our religion, culture and way of life. Our tribal members eat far

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[2] EPA described these meetings/calls as "E.O. 13175 Tribal Consultations," but they were not true government-to-government consultations between sovereigns.
[3] ATNI is a regional organization, numbering 57 members, comprised of American Indians/Alaska Natives and tribes in Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska.
[4] Advance Notice of Proposed Rulemaking: Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations for Polychlorinated Biphenyls (PCBs),; Docket ID No. EPA-HQ-OPPT-2009-0757, Federal Register, Vol. 75, No. 66 (April 7, 2010), p. 17658.
[5] "Limit consumption of some fish species near Bonneville Dam, middle Columbia River," Oregon Health Authority (News Release), September 23, 2013, http://www.oregon.gov/oha/news/Documents/2013-0923-mid-columbia-fish-advisory.pdf.
[6] 12 Stat. 945.

more fish than the "average" non-Indian—up to nine times as much.[7] Thus we suffer disproportionate impacts from PCBs and other toxins.[8]

Beginning with a joint study of tribal fish consumption conducted by EPA Region 10 and the Columbia River Inter-Tribal Fish Commission and published in 1994,[9] CTUIR has worked for nearly two decades to obtain safer, cleaner water for our fish and for our people. In 2011, working with EPA, we finally convinced the State of Oregon to adopt more stringent water quality standards which incorporated a fish consumption rate more accurately reflective of tribal consumption. In Oregon, we are now looking at implementation of the improved standards. In Washington and Idaho, tribes are working collaboratively with EPA and others as those States engage in the process of revisiting and potentially revising their water quality standards. Compliance with more stringent standards (which have or may be adopted) will be difficult if not impossible if PCBs continue to be allowed in certain commercial products. Failure to confront the dilemma of continued on-going PCB releases threatens to derail years of cooperative efforts in the region to improve the health of our waters and our fish.

Additionally, in conjunction with the various state standards revision processes, there are multiple discussions about addressing actual source reduction—eliminating the use and generation of toxics in the first place, instead of simply focusing on clean-up after-the-fact. Reducing the allowable PCB level to zero would do just that. Continuing to authorize PCB use would be contrary to regional source reduction initiatives.

Finally, allowing ongoing PCB use, and inevitably worsening the burdens of existing contamination, would be a failure by EPA to uphold its Trust Responsibility to CTUIR and other tribes to safeguard tribal trust resources. It would also violate EPA's Environmental Justice policy.

It is a common public misconception that PCBs are "banned." They are not. They should be. We should begin the process that leads to the eventual end of all new sources of PCBs in any amount. Protecting Native Americans from the continued, ongoing use and discharge of PCBs will benefit all people who use and enjoy fish, shellfish and the clean water needed to support and sustain them.

CTUIR, in our historic and judicially-recognized role as resource co-managers, has been at the forefront of region-wide actions to preserve and enhance salmon, water and other tribal First Foods. We have emphasized scientifically sound and rigorous strategies, cooperative working relationships, and cost-effective management.

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[7] *See* "A Fish Consumption Survey of the Umatilla, Nez Perce, Yakama, and Warm Springs Tribes of the Columbia River Basin," Columbia River Inter-Tribal Fish Commission (1994); http://www.critfc.org/reports/a-fish-consumption-survey-of-the-umatilla-nez-perce-yakama-and-warm-springs-tribes-of-the-columbia-river-basin/; http://www.deq.idaho.gov/media/895853-fish-consumption-survey-1994.pdf (hereinafter "Survey").

[8] In its rulemaking notice EPA itself acknowledged that:

> Disadvantaged populations may be more exposed to PCBs in contaminated fish than members of the general population. . . . Indian tribes have subsistence lifestyles and rely on fish and mammals that may be caught in PCB contaminated waters and environs, as a primary source of nutrition. Fish in these waters may have been contaminated by both PCB wastes disposed of prior to the use authorizations, as well as releases that have occurred from the currently authorized use, distribution in commerce and disposal of PCBs.

[9] Survey.

Beyond these immediate approaches, we have always been guided by the wisdom of our ancestors, and concern for the next Seven Generations, as we have sought to maintain and practice our religion, culture and traditions. All this is threatened by ubiquitous toxics such as PCBs that are now so widespread around us. Every opportunity to reduce the amount of toxics that are created and released should be embraced. CTUIR urges you to revise your rules reducing the allowable level of PCBs in products from 50 ppmto zero (0).

CTUIR thanks you for considering our comments. If you have any questions or would like to discuss this matter further, please contact our First Foods Policy Program at (541) 276-3165.

Sincerely,

Gary Burke

Gary Burke, Chairman
Board of Trustees

GB: cm, cl

Attachment: CTUIR DNR Letter to EPA, August 20, 2010

CC: Fish and Wildlife Commission
Tribal Water Commission
Dennis McLerran, Administrator, EPA Region 10
Jim Jones, EPA OCSPP
Tom Simons, EPA OCSPP
Sara Kemme, EPA OCSPP

XIV. February 13, 2014 National Tribal Toxics Council Letter

National Tribal Toxics Council

P.O. Box 15004 Flagstaff, AZ 86011
928-523-2005 Office 928-523-1266 Fax
www.tribaltoxics.org

February 13, 2014

Tom Simons
Office of Chemical Safety and Pollution Prevention (OCSPP)
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 7404T
Washington, DC 20460

RE: Response to Tribal Consultation E.O. 13175, December 12, 2014,
PCB Use Authorizations Request for EPA to Develop PCB Action Plan

Dear Mr. Simons:

The National Tribal Toxic Council (NTTC) proposes that EPA develop an action plan for addressing PCBs in the environment, focusing on source control. Continued uses of PCBs must be considered to address EPA's "rulemaking objective to prevent future releases of and related exposures to PCBs," as stated in EPA's Consultation letter dated October 31, 2013.

EPA's TSCA Work Plan Chemicals: Method Document, February 2012, identifies potential candidate chemicals for near-term review and assessment under TSCA. In this document, EPA states "PCBs were excluded from the Work Plan because they are already comprehensively regulated under TSCA, which bans their manufacture, processing, use and distribution in commerce". Chemicals covered by Action Plans or other currently ongoing regulatory activities under TSCA were also excluded because they had been recently reviewed and are already being addressed." This is a simplified statement that interprets TSCA as having sufficient regulations in place to protect people from exposures to PCBs. However, TSCA does not have any provisions to review and assess the impact of the 50ppm level of PCBs that are currently allowed as an inadvertent product in the manufacturing process. Additionally, the 2010 ANPRM on PCB Reassessment of Use Authorizations states the following considerations that are no longer being considered by EPA:

> *B. Excluded Manufacturing Process* The current definition states, "The concentration of inadvertently generated PCBs in products leaving any manufacturing site or imported into the United States must have an annual average of less than 25 ppm, with a 50 ppm maximum." EPA is considering whether to eliminate the annual average and whether the maximum concentration should be set at < 1 ppm.
>
> *C. Recycled PCBs* The current definition states, ''The concentration of PCBs in paper products leaving any manufacturing site processing paper products or paper products imported into the United States must have an annual average of less than 25 ppm, with a 50 ppm maximum.'' EPA is considering whether to revise the annual average and whether the maximum should be lowered. Additionally, the

definition requires the release of PCBs to ambient air at any point be at concentrations <10 ppm. EPA is considering whether the maximum allowable PCB concentration released to air should be lowered to be consistent with what the Agency has said about PCB exposures from PCBs in caulk (Ref. 49).

EPA 's Office of Pollution Prevention and Toxics is not currently recommending action to review and assess PCBs as indicated by OPPT Director, Wendy Clelend-Hamnett's statement, in her letter dated December 12, 2013:

> *EPA recognizes that many of the issues you highlighted* [NTTC letter dated November 15, 2013] *are of concern to tribal governments, but would require further consideration to determine if the agency should pursue regulatory revisions. For example, the reconsideration of the use of the 50 parts per million levels for excluded PCB products would require substantial and lengthy analytical efforts to determine whether a rulemaking is necessary.*

How will EPA initiate this effort if it is currently excluded from the Agency's TSCA Work Plan Chemicals Methods Document?

NTTC is very concerned that the continued use of the 50ppm level for excluded PCB products is providing a pathway for continuing PCB release and related exposures through first foods. EPA should identify and remediate the PCBs presenting a substantial risk to the environment. Investigation and inventory of past spills and current uses of PCB sources is necessary to controlling sources. Controlling sources of residual PCBs being transported into local water bodies will be an essential means of complying with TMDLs for PCBs. A phase-out of remaining uses may be warranted due to the extremely low concentrations mandated in TMDLs to protect human health and the environment. This has the potential to improve water quality of rivers, streams, and the ocean by identifying, tracking, and controlling the main sources of PCBs that are currently entering the environment.

It has also come to our attention that there may not be enforcement measures in place to monitor PCB levels in imported products. NTTC would like clarification on how it is determined which imported products contain PCBs and what agency is responsible for monitoring the levels of PCBs in these products.

TSCA regulation is not sufficient for preventing future releases of and related exposures to PCBs; TSCA Work Plan Chemicals Method Document excludes PCBs from being reviewed and assessed. NTTC is requesting that EPA develop an action plan for addressing PCBs in the environment. Formal tribal input must be solicited through the consultation process to determine what should be included in the plan to prevent future releases of and related tribal exposures to PCBs. NTTC would also like to offer assistance by engaging in the plan development.

Sincerely,

Dianne C. Barton, Chair
National Tribal Toxics Council

XV. August 23, 2016 – Tribal Government Information Session Presentation

Reassessment of Use Authorizations for PCBs in Small Capacitors (SAN 5256.1):

PCB Fluorescent Light Ballasts in Schools and Daycares

Tribal Government Information Session

August 23, 2016

National Program Chemicals Division

Office of Pollution Prevention and Toxics

Meeting Purpose and Agenda

- Purpose:
  - To provide an overview of proposed changes to polychlorinated biphenyls (PCBs) use authorizations (40 CFR 761)
  - Answer questions and solicit feedback
- Agenda:
  - Background
  - PCBs in fluorescent light ballasts (FLBs)
  - Potentially affected entities
  - Option selection
  - Preliminary estimate on cost
  - Open table questions & answers
  - Next steps & EPA contact information

Background

- Beginning in 1979, EPA promulgated regulations (at 40 CFR part 761) that established authorizations for certain ongoing uses of PCBs
- On April 7, 2010, EPA published an *Advanced Notice of Proposed Rulemaking* (ANPRM) entitled "Polychlorinated Biphenyls: Reassessment of Use Authorizations"
- EPA commenced developing a proposed rule to address four categories of authorized uses:
  - PCB small capacitors in fluorescent light ballasts (FLBs)
  - Liquid PCBs in other electrical equipment
  - PCBs in natural gas pipelines
  - PCB contaminated porous surfaces

Activity to Prepare for a NPRM

- In January 2012 and June 2013, EPA updated the National Tribal Toxics Council on the rulemaking effort
- On December 12, 2013, EPA engaged governments in an *EO 13175: Tribal Consultation* to discuss the rulemaking effort
- In July 2014, EPA engaged the National Tribal Caucus and the National Tribal Operations Committee to discuss the rulemaking effort
- Since the 2014 communications to tribal governments, EPA has narrowed the scope of what is being proposed in the rule; specifically, the agency is focusing this rule on the use of PCB-containing small capacitors in FLBs residing in schools and daycare buildings

Activity to Prepare for a NPRM

- EPA has initiated this rulemaking to end certain authorized uses of PCBs
  - This new proposed rule would phase out PCB FLBs in daycares and in primary and secondary schools ***(not intended for residential daycare settings)***
  - PCB FLBs now in use exceed their designed life by decades and are prone to increasing failure
  - EPA believes it is important to move forward with a rule to protect children and adults in schools and daycares from PCB FLB exposures
  - More cost-effective (energy-efficient) alternative FLBs are readily available to replace old PCB FLBs
- EPA will focus on the other "PCB use authorizations" in a second future rulemaking

PCB Health Concerns

- Sudden rupture of PCB small capacitors in FLBs may result in exposure to the occupants and may also result in significant clean-up costs
- Intact PCB FLBs can emit PCBs into indoor air which may present a significant exposure to occupants, particularly children
- Potential acute health effects can include chloracne, irritation of eyes, face and skin
- Potential chronic health effects can include liver disorders, reproductive and developmental effects, cancer, and effects on endocrine, immune and nervous systems

PCBs in FLBs – Identification

FLB Containing Fixture

- Linear strip fixtures
- Typical of T-12 style lighting
- Not part of compact fluorescent lamps
- Almost all pre-1978 construction contain PCBs

PCBs in FLBs – Identification

Typical PCB Containing FLB (pre-1978)

Marked, Non-PCB FLB

PCBs in FLBs – Identification

PCB FLB Failure (typical aftermath of overheating failure)

PCBs in FLBs – Failure is a Problem

- PCB FLB failure and release is a nationwide issue
  - Documented failures in New York, North Dakota, Indiana, Ohio, Washington, Michigan, West Virginia, etc.
- Worcester Public Schools, Worcester County, Massachusetts
  - Voluntary planning for removal and remediation
  - 21 of 29 schools identified “stained” FLBs in fixtures
- Los Angeles County Unified School District, Los Angeles, California
  - Voluntary planning for removal and remediation
  - 553 schools inspected; 7,827 PCB FLBs with 2,772 leaking
- Washington State Department of Ecology “PCB Chemical Action Plan”
  - Outlines 9,000 potential school buildings in need of assessment to determine presence of PCB FLBs

EPA Rulemaking Options Considered

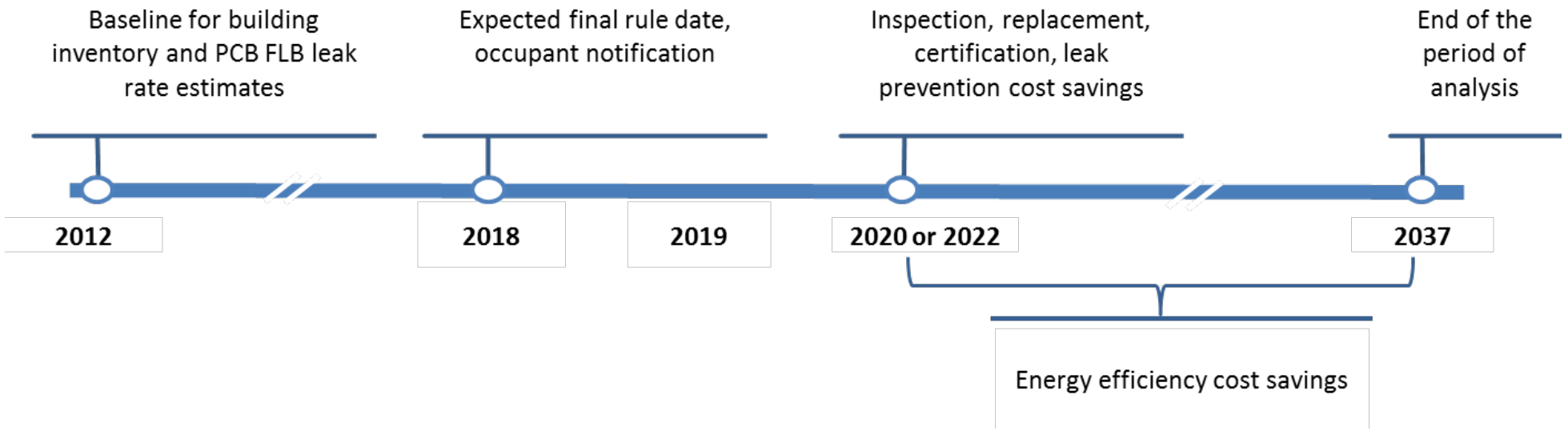
Options Overview

Options Considered		
Option	**Option Variation**	**Phase-Out Year**
1	With both notification and certification	2020 or 2022
2	With notification and without certification	2020 or 2022
3	Without notification and with certification	2020 or 2022
4	Without both notification and certification	2020 or 2022

- For schools that find PCB FLBs after the final rule effective date:
  - Notify (audience is building occupants, including parents or guardians of children attending the facility)
    - Post placard in prominent place in building and web-based notification on school (or school board) website
  - Certify
    - Standardized form submitted to EPA by phase-out date certifying there are no PCB FLBs present

Preliminary Economic Analysis

Timeline of Activities



Preliminary Economic Analysis
Potentially Impacted Entities

- Elementary and secondary schools (NAICS* - 611110)
- Child day care services (NAICS* – 624410)
- Commercial building owners (NAICS* - 53)
- Governments or other entities with public buildings (NAICS* - 92)
- Repair and maintenance of lighting and buildings (NAICS* – 811)

*NAICS – North American Industrial Classification System

NOTE – The NAICS codes are not intended to be exhaustive, but rather provide guidance for attendees likely to be affected by this action

Preliminary Economic Analysis

Potentially Impacted Entities in 2018

Building Type	Buildings with PCB FLBs as % Total Buildings in 2018 [1]	Number of Buildings that may Have PCB-containing FLBs in 2018 [1]	Number of PCB-containing FLBs in 2018 [2]	Number of Leaking PCB-containing FLBs in 2018 [3]
Local Public Schools	8%	15,241	1,808,988	1,255,919
State Public Schools	8%	218	30,309	21,043
Tribal Public Schools	8%	27	3,176	2,205
Private Schools	12%	3,384	298,168	207,008
Private Daycares	12%	8,306	488,109	338,878
Local Public Daycares	8%	581	73,687	51,159
State Public Daycares	5%	7	1,075	746
Total	**10%**	**27,765**	**2,703,512**	**1,876,957**

[1] Total Buildings and pre-1980 buildings, fluorescent lighting, no complete lighting retrofit based on 2012 Department of Energy survey data, Census data and NCES/NSECE data

[2] Assumes 17% of total FLBs contain PCBs

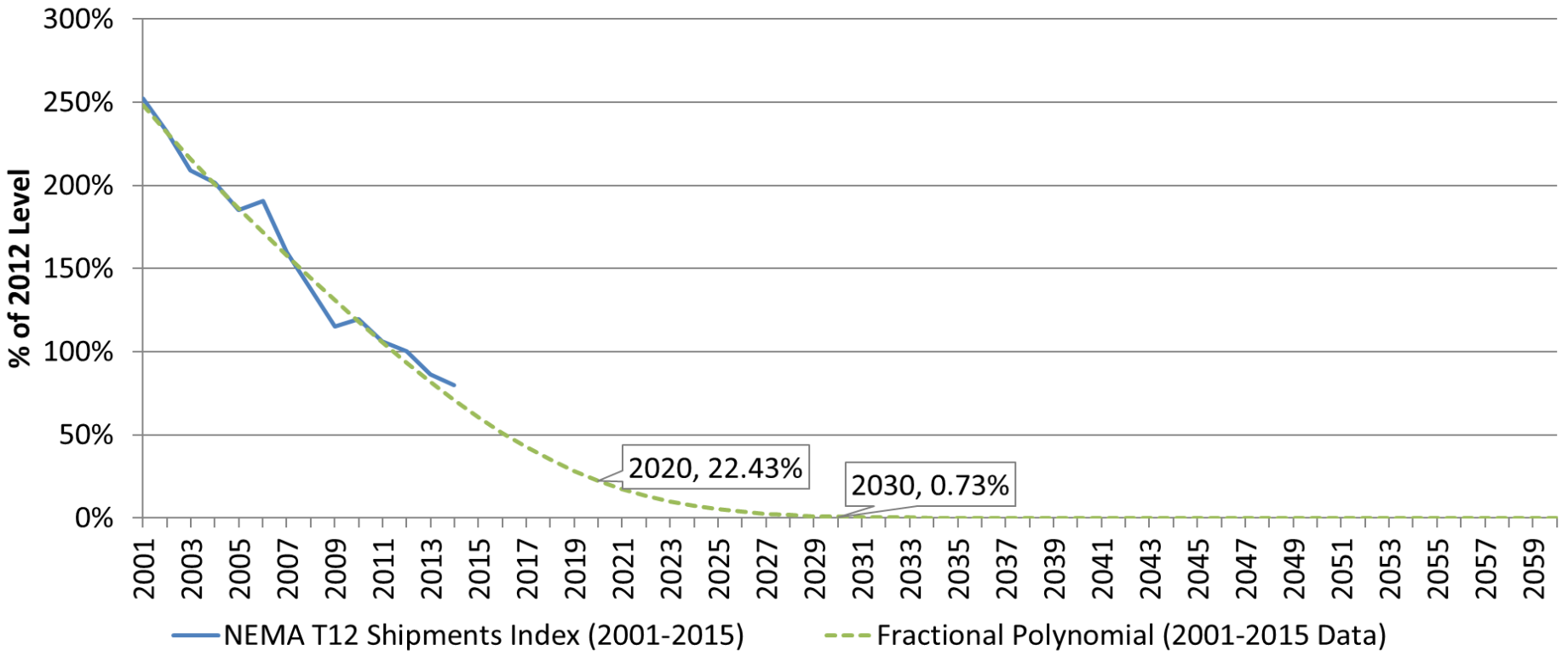
[3] Assumes 69% leak in 2018

Preliminary Economic Analysis
Baseline Attrition

- Baseline Attrition → The number of buildings that contain PCB FLBs is naturally decreasing over time even without regulation
  - Ballast failures, energy efficiency lighting upgrades, remodeling, etc.
- Estimated baseline attrition using National Electrical Manufacturers Association (NEMA) T12 Shipments Index
  - Old PCB FLB lighting systems use T12 lamps/bulbs, so T12 lamp shipments over time are likely to track declines in the inventory of operating PCB FLBs
  - NEMA shipment data from 2001 to 2015 was used to fit "fractional polynomial" curve (see next slide)
  - Used "fractional polynomial" curve to project future building inventory and estimate number of buildings remaining that may contain PCB FLBs in any given year beyond 2012

Preliminary Economic Analysis

NEMA T12 Shipments Index and Baseline Attrition

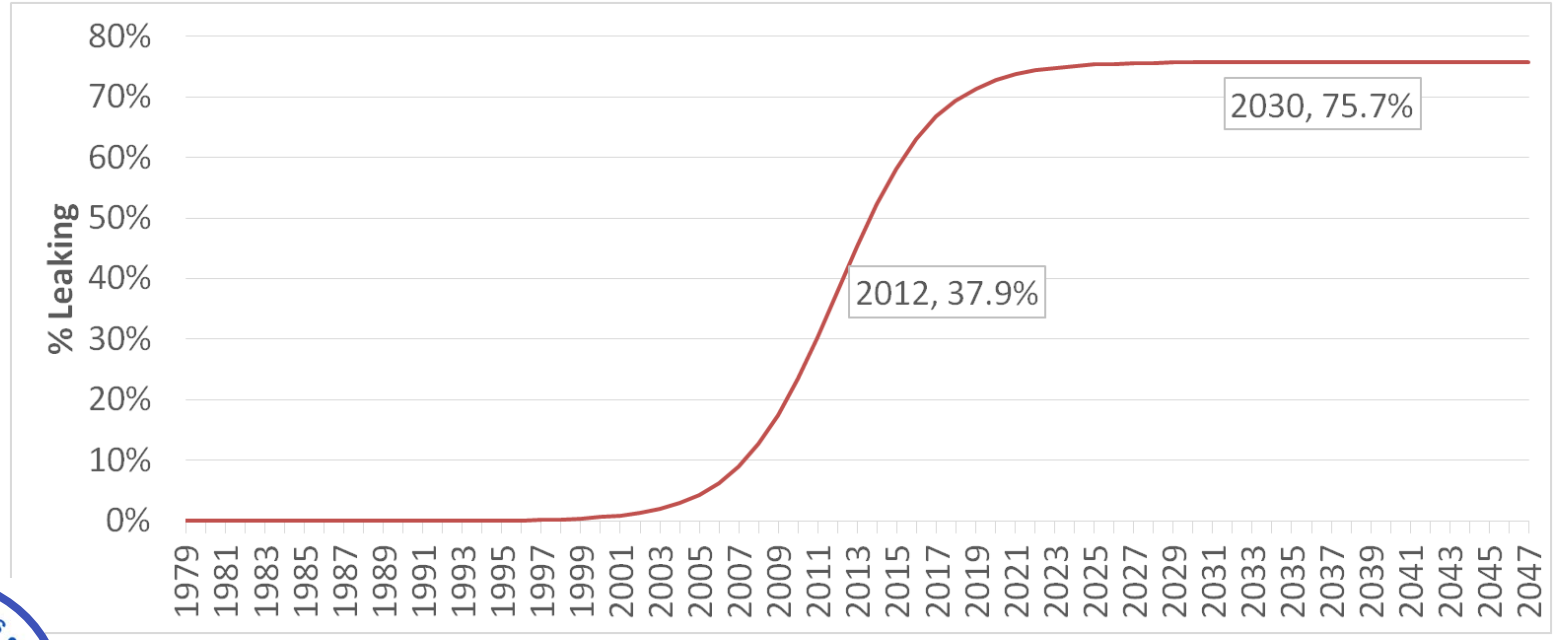


- Used “fractional polynomial” curve to account for “long tail” of PCB FLBs that might remain in the baseline, even after most have been replaced

Preliminary Economic Analysis

Baseline Increase in Leaking PCB FLBs over Time

- Percentage of PCB FLBs leaking in 2012 doubles by 2030, due to age (exceed their design life)
- Curve remains relatively flat after 2030 (assumes some remaining old ballasts may remain intact)



Preliminary Economic Analysis

Baseline Inventories at Tribal Schools, by Year

Inventory Type	2018	2019	2020	2021	2022
Pre-1980 School Buildings without Lighting Upgrade	27	22	17	13	10
Pre-1980 Buildings with Lighting Upgrade	120	125	129	133	136
Total FLBs	19,056	15,390	12,223	9,538	7,306
PCB FLBs	3,176	2,565	2,037	1,590	1,218
% PCB FLBs Leaking	69.4%	71.4%	72.8%	73.7%	74.4%
Leaking PCB FLBs	2,205	1,831	1,482	1,172	906
Non-Leaking PCB FLBs	971	734	555	418	312

Preliminary Economic Analysis

Estimated Unit Costs per Activity

- Notification Cost: $167 - $298 per building
  - $298 for school (based on 1 clerical, 1 manager, and 6 maintenance hours)
  - $167 for daycare (based on 0.6 clerical, 0.6 manager, and 3.4 maintenance hours)
- FLB Inspection: $9.14 per fixture
  - Based on 2 maintenance staff x 9 minutes per fixture
  - The inspection is NOT mandated by the proposed rule
- Replacement (complete replacement of lighting fixture with leaking ballast): $184.25 per ballast
  - $175.52 for replacement (with parts and certified electrician labor included) plus $8.73 for disposal (including drums and shipping costs), per fixture with leaking ballast

Preliminary Economic Analysis

Estimated Unit Costs per Activity, cont.

- Retrofit (replacement of non-leaking ballast contained within lighting fixture – not entire fixture): $83.06 per ballast
  - $79.69 for retrofit (with parts and certified electrician labor included) plus $3.37 for disposal (including drums and shipping costs), per fixture without leaking ballast
- Certification Form: $18 per entity
  - Based on 15 minutes of education administrator time to fill out form
- Energy Efficiency Unit Cost Savings: -$18.71 per replaced PCB FLB per year (ENERGY STAR, 2008 Building Upgrade Manual)
  - Assumes upgrade from T12 lamps with magnetic ballasts to T8 lamps with electronic ballasts

EPA Rulemaking Options Considered

Bottom-Line Economic Cost of Each Option, All Tribal Schools

Summary of Economic Costs by Option, Tribal Schools (7% Discount Rate)[1]			
Option	**Option Variation**	**2020 Phase-Out**	**2022 Phase-Out**
1	With notification and certification	$43,558	$30,422
2	With notification and without certification	$43,143	$30,059
3	Without notification and with certification	$34,687	$21,550
4	Without notification and certification	$34,271	$21,188

[1] Bottom-Line Costs cover all Tribal schools = (costs - cost savings)

Open Table Questions & Answers

- Do you have information regarding the degree to which tribal school building(s) or daycares built before 1979 have FLBs that contain PCBs?
- Do you have information regarding the degree to which tribal school building(s) or daycares built before 1979 have already performed lighting upgrades?
- Do you have information pertaining to either the process or the length of time it takes for tribal education leaders (e.g., BIA) or tribal government owned daycare buildings to inspect, fund, plan and complete retrofits?
- Other questions/comments?

Next Steps & Contacting EPA

- Submit comments by email to Peter Gimlin (gimlin.peter@epa.gov)
- Anticipated date for NPRM promulgation: Early 2017

Thank you!

PCB Rulemaking Contact: Peter Gimlin
1201 Pennsylvania Avenue NW – 7404T
Washington DC 20460
(202) 566-0515
Gimlin.Peter@epa.gov